



International
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Understanding patterns of structural discrimination against migrant and other workers in some countries of South and West Asia



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► **Understanding patterns of structural discrimination against migrant and other workers in some countries of South and West Asia**

Background paper

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► Foreword

Discrimination in the world is commonly included in labour related reports. However, quite often, public discourse focuses on specific cases of discrimination rather than analysing systemic discrimination. Trade unions and other labour activists regularly publish global and national reports on discriminatory labour practices. While the documentation of specific cases of labour discrimination is, no doubt, very important, when this discrimination is framed in such a way, the issue appears to be linked to the practices of a few employers and poor law enforcement.

The International Labour Organization's (ILO) reports related to equality of opportunity and discrimination, by the Committee of Experts for the Application of Conventions and Recommendations, highlight the specific laws and policies that underpin some forms of labour discrimination at a national level. This background paper reviews those many annual reports and analyses some of the processes that shape laws and policies.

Freedom from discrimination in the world of work is one of the four pillar of fundamental principles and rights at work. While many ILO publications on fundamental principles and rights at work deal with child labour, forced labour, and freedom of association and collective bargaining, fewer explore labour discrimination and equality. Even fewer publications explore the structural nature of discrimination in the world of work, including its genesis, and the link between all categories of fundamental rights. This paper is an attempt to start filling that gap – it sheds light on how all fundamental principles and rights at work are closely connected. This paper is not exhaustive, but it lays out some of

the key parameters that should be considered by anyone reviewing discriminatory work practices in connection with migration.

The recent 2019 coronavirus disease (COVID-19) pandemic has brought to light how certain people were more indispensable, or protected, than others. This paper illustrates examples of how the pandemic and the resultant multilayered crises that impacted countries in South and West Asia have unequally affected the world of work. More broadly, increasingly some media promotes without any evidence, a public and nationalist discourse linking immigration, the unemployment rate of nationals, and poor national economic performance.

This paper problematizes such narratives and explores the processes and political dynamics that shape job markets and opinions about migrant and other vulnerable workers. The analysis is helpful in deepening the general understanding of the web of policies and political processes that underpin discrimination in the world of work and people's labour mobility. This paper was prepared within the framework of Work in Freedom programme, a development cooperation programme of the ILO. The programme's central goal has been to reduce vulnerability to forced labour, and yet one of the main lessons it has learned over the past seven years is that discrimination in the world of work is a root factor underpinning forced labour practices. To prevent forced labour, one has to first tackle labour discrimination. We hope this paper will contribute to a better understanding of discrimination patterns for policymakers, social partners, UN organizations as well as other analysts and practitioners.

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This background paper was written in 2020 and is inspired by discussions and recommendations

raised at a round table titled Labour at the Margins: Action for Non-discrimination and Inclusion, organized from 27–28 January 2020 in New Delhi by the Institute for Human Development, the London School of Economics and the International Labour Organization's Work in Freedom Programme. The authors of this paper would like to thank the Institute of Human Development and the London School of Economics for making this preliminary gathering possible.



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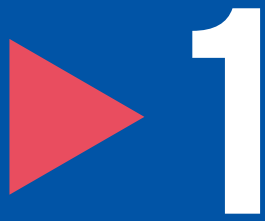
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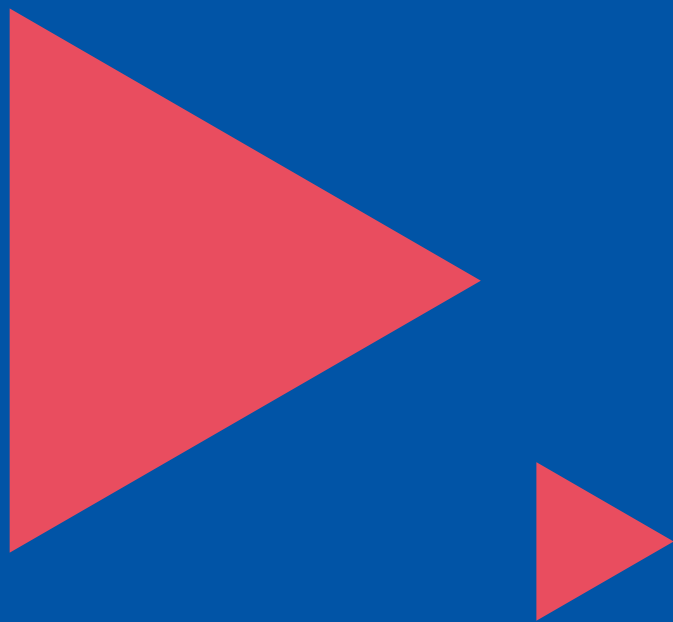
► Abbreviations

AOFWG	Association of Owners of Factories, Workshops and Garments
BNWLA	Bangladesh National Women Lawyers' Association
CAS	Conference Committee on the Application of Standards
CBA	Collective bargaining agreement
CEACR	Committee of Experts on the Application of Conventions and Recommendations
CEDAW	Convention on the Elimination of All Forms of Discrimination Against Women
CHT	Chittagong Hill Tracts
CPA	Comprehensive Peace Agreement
EPIC	Equal Pay International Coalition
FLFP	Female labour force participation
HDI	Human Development Index
ICERD	International Convention on the Elimination Racial Discrimination
ICRMW	International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families
IDMC	Internal Displacement Monitoring Centre
ILO	International Labour Organization
JD	Jordanian dinar
JGATE	Jordan Garments, Accessories and Textile Exporters' Association
KD	Kuwaiti dinar
LMRA	Labour Market Regulatory Authority
LSE	London School of Economics
MOU	Memorandum of understanding
MP	Member of Parliament
NHRC	National Human Rights Commission
NSSO	National Sample Survey Office
OBC	Other backward class
OECD	Organisation for Economic Co-operation and Development
SC	Scheduled caste
SC/ST Act	Scheduled Caste/Scheduled Tribe (Prevention of Atrocities) Act, 1989
SEZ	Special economic zone
SME	Small and mid-size enterprise
SSC	Sector Skill Council
ST	Scheduled tribe
TVET	Technical and vocational education and training
UN	United Nations
UPSS	Usual Principal and Subsidiary Status
WIF	Work in Freedom





Introduction



This background paper reviews the literature that sheds light on the structural patterns of discrimination against migrant workers in some countries of South and West Asia. It also articulates recommendations that would help officials in United Nations (UN) agencies, international organizations, constituents and other civil society individuals and groups, while referring to the existing evidence of structural discrimination to support the application of international labour standards.

This endeavour builds on research undertaken by the Inequality and Poverty Research Programme of the Department of Anthropology in the London School of Economics (LSE), and studies and lessons learned as documented by the Work in Freedom (WIF) Programme of the International Labour Organization (ILO).

Chapter 1 begins with a critical examination of existing definitions of some key concepts related to labour discrimination. Chapter 2 reviews the political, legal and economic environment on labour discrimination. Chapter 3 identifies common determinants of labour discrimination. The paper then concludes with reflections on methods and approaches that may be used to shape policy responses and a set of indicative recommendations.

1.1 Scope of international human rights and labour standards

Provisions concerning discrimination in international human rights instruments, international labour standards and domestic law are important, as they frame the legal and institutional framework of how labour-related discrimination is formally perceived and how it is meant to be addressed.

1.1.1 United Nations human rights standards

- ▶ The [Universal Declaration of Human Rights](#) (1948) states that: “Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other

opinion, national or social origin, property, birth or other status.” (Article 2)

- ▶ The [International Covenant on Civil and Political Rights](#) stipulates that: “Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.” (Articles 2(1) and 26)
- ▶ The [International Covenant on Economic, Social and Cultural Rights](#) states that: “The States Parties to the present Covenant undertake to guarantee that the rights enunciated in the present Covenant will be exercised without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.” (Article 2(2))

Note: Treaty bodies monitoring the application of these two covenants have now clearly stated that the non-discrimination clauses also apply to discrimination on the basis of nationality.¹

- ▶ The [International Convention on the Elimination of All Forms of Racial Discrimination](#) (ICERD) (1969) defines racial discrimination as “any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life.” (Article 1)
- ▶ The [Convention on the Elimination of All Forms of Discrimination Against Women](#) (CEDAW) (1979) defines discrimination against women as “any distinction, exclusion or restriction made

¹ Point 30 of General Comment No. 20, Non-Discrimination in Economic, Social and Cultural Rights (Article 2, Paragraph 2). Committee on Economic, Social and Cultural Rights. Forty-second session, Geneva, 4–22 May 2009, Item 3 of the provisional agenda.

on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.” (Article 1)

- ▶ [The International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families](#) (ICRMW) (1990) states that: “State parties undertake, in accordance with the international instruments concerning human rights, to respect and to ensure to all migrant workers and members of their families within their territory or subject to their jurisdiction the rights provided for in the present Convention without distinction of any kind such as to sex, race, colour, language, religion or conviction, political or other opinion, national, ethnic or social origin, nationality, age, economic position, property, marital status, birth or other status.” (Part II, Article 7) (The following countries covered in this paper are not party to this Convention: Bahrain, India, Jordan, Kuwait, Lebanon, Nepal, Oman, Saudi Arabia, Qatar and United Arab Emirates.)
- ▶ The purpose of the [Convention on the Rights of Persons with Disabilities](#) (2008) is “to promote, protect and ensure the full and equal enjoyment of all human rights and fundamental freedoms by all persons with disabilities, and to promote respect for their inherent dignity.” (Article 1) “Discrimination on the basis of disability” means “any distinction, exclusion or restriction on the basis of disability which has the purpose or effect of impairing or nullifying the recognition, enjoyment or exercise, on an equal basis with others, of all human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field. It includes all forms of discrimination, including denial of reasonable accommodation”. (Article 2)

Other core international instruments also contain elements related to non-discrimination.²

1.1.2 International Labour Standards and other ILO instruments

- ▶ Freedom from discrimination in employment or occupation is one of the fundamental principles of labour rights. The [Discrimination \(Employment and Occupation\) Convention, 1958 \(No. 111\)](#) defines discrimination as:

(a) any distinction, exclusion or preference made on the basis of race, colour, sex, religion, political opinion, national extraction or social origin, which has the effect of nullifying or impairing equality of opportunity or treatment in employment or occupation (Article 1)

(b) such other distinction, exclusion or preference which has the effect of nullifying or impairing equality of opportunity or treatment in employment or occupation as may be determined by the Member concerned after consultation with representative employers’ and workers’ organizations, where such exist, and with other appropriate bodies. (Article 1)

Note: The grounds of discrimination listed in Article 1(1)(a) of Convention No. 111 do not include “nationality”. Notwithstanding this, in its [2012 General Survey](#) (pp. 324–326), the ILO Committee of Experts on the Application of Conventions and Recommendations (CEACR) emphasized that “Governments should declare and pursue a national equality policy which covers all workers, including migrant workers, with a view to eliminating discrimination against them on all the grounds listed in the Convention.” See also the [Equality at Work Report](#) (ILO 2011, 34–40). However, Article 1(1)(b) of Convention No. 111 allows ratifying states, after consultation with workers’ and employers’ organizations, to determine additional grounds of discrimination to which the Convention shall apply. In this

² For more information, please see: UN Human Rights, Office of the Commissioner, “[The core international human rights instruments and their monitoring bodies](#)”.

light, some countries refer explicitly to discrimination on the basis of nationality in their legislation.

- ▶ The [Equal Remuneration Convention, 1951 \(No. 100\)](#) defines the scope of discrimination as follows: “the term equal remuneration for men and women workers for work of equal value refers to rates of remuneration established without discrimination based on sex.” (Article 1(b)) (The following countries covered in this paper are not party to this Convention: Bahrain, Kuwait, Qatar and Oman)
- ▶ The [ILO Declaration on Fundamental Principles and Rights at Work \(1998\)](#) calls on all Member States “to promote and realize within their territories the right to be free from discriminatory employment practices”. (Article 2(d))
- ▶ The [Domestic Workers Convention, 2011 \(No. 189\)](#) states that: “Each Member shall take measures towards ensuring equal treatment between domestic workers and workers generally in relation to normal hours of work, overtime compensation, periods of daily and weekly rest, and paid annual leave in accordance with national laws, regulations or collective agreements, taking into account the special characteristics of domestic work.” (Article 10 (1)) Paragraph 3 of Recommendation No. 201 also refers to discrimination.
- ▶ The [Violence and Harassment Convention, 2019 \(No. 190\)](#) is particularly relevant, as violence and harassment in particular are often also seen as serious manifestations of discrimination. Article 5 mentions that: “With a view to preventing and eliminating violence and harassment in the world of work, each Member shall respect, promote and realize the fundamental principles and rights at work, namely freedom of association and the effective recognition of the right to collective bargaining, the elimination of all forms of forced or compulsory labour, the effective abolition of child labour and the elimination of discrimination in respect of employment and occupation, as well as promote decent work.” Article 6 highlights that “each Member shall adopt laws, regulations and policies ensuring the right to equality and non-discrimination in employment and occupation, including for women workers, as well as for workers and other persons belonging to one or more vulnerable groups or groups in situations of vulnerability that are disproportionately affected by violence and harassment in the world of work.” Finally, paragraph 5 of the [Employment and Decent Work for Peace and Resilience Recommendation, 2017 \(No. 205\)](#) mentions that: “Members should ensure that provisions on violence and harassment in national laws, regulations and policies take into account the equality and non-discrimination instruments of the International Labour Organization, including the Equal Remuneration Convention (No. 100) and Recommendation (No. 90), 1951, and the Discrimination (Employment and Occupation) Convention (No. 111) and Recommendation (No. 111), 1958, and other relevant instruments.”
- ▶ The [Migration for Employment Convention \(Revised\), 1949 \(No. 97\)](#) states that: “Each Member for which this Convention is in force undertakes to apply, without discrimination in respect of nationality, race, religion or sex, to immigrants lawfully within its territory, treatment no less favourable than that which it applies to its own nationals in respect of the following matter.” (None of the countries covered by this paper have ratified this convention.) Articles 17 and 18 of the model agreement annexed to the [Migration for Employment Recommendation \(Revised\), 1949 \(No. 86\)](#) also refer to equality of treatment.
- ▶ The [Migrant Workers \(Supplementary Provisions\) Convention, 1975 \(No. 143\)](#) mentions that: “Each Member for which the Convention is in force undertakes to declare and pursue a national policy designed to promote and to guarantee, by methods appropriate to national conditions and practice, equality of opportunity and treatment in respect of employment and occupation, of social security, of trade union and cultural rights and of individual and collective freedoms for persons who as migrant workers or as members of their families are lawfully within its territory.” (Article 10) (None

of the countries covered in this paper have ratified this Convention.) Several paragraphs of the [Migrant Workers Recommendation, 1975 \(No. 151\)](#) refer to the principle of equality of treatment, starting with Paragraph 2 of the national policy on equality of opportunity and treatment.

- ▶ The [Indigenous and Tribal Peoples Convention, 1989 \(No. 169\)](#) further defines the provisions to avoid the exclusion of indigenous populations: “Indigenous and tribal peoples shall enjoy the full measure of human rights and fundamental freedoms without hindrance or discrimination. The provisions of the Convention shall be applied without discrimination to male and female members of these peoples.” (Article 3) (Among the countries covered in this paper, this Convention has only been ratified by Nepal.) Article 3, Paragraph 3, of [Indigenous and Tribal Populations Convention, 1957 \(No. 107\)](#) also says that: “the right of indigenous people to enjoy the general rights of citizenship, without discrimination, shall not be prejudiced in any way by such special measures of protection.” This Convention has been ratified by India and Bangladesh.
- ▶ The [Social Protection Floors Recommendation, 2012 \(No. 202\)](#) states in paragraph 3, the following principles of the recommendation related to discrimination:
 - (a) universality of protection, based on social solidarity;
 - (d) non-discrimination, gender equality and responsiveness to special needs;
 - (e) social inclusion, including of persons in the informal economy.
- ▶ The [HIV and AIDS Recommendation, 2010 \(No. 200\)](#) has several paragraphs related to discrimination against migrant workers.³
- ▶ [Private Employment Agencies Recommendation, 1997 \(No. 188\)](#),

paragraphs 8 and 9. The [Fair Recruitment Initiative Strategy 2021–2025](#) highlights the need to prioritize non-discriminatory solutions in the context of recruitment.

- ▶ The [Global Call to Action for a human-centred recovery that is inclusive, sustainable and resilient](#) is an important document framing non-discrimination at the centre of post-COVID-19 recovery responses.

1.2 Methods to review literature

1.2.1 Definitions of labour discrimination used in this paper

While various human rights and labour standards exist, as presented here, this paper will primarily ascribe to the broad definition provided in Convention No. 111 on discrimination, which reads as follows: discrimination relates to “any distinction, exclusion or preference made on the basis of race, colour, sex, religion, political opinion, national extraction or social origin, which has the effect of nullifying or impairing equality of opportunity or treatment in employment or occupation.” The paper will primarily review incidences of discrimination based on (1) place of origin (national extraction, race or colour); (2) sex; (3) caste or indigenous group status (social origin); and (4) intersectional identities regrouping several of the above markers of discrimination. Patterns of discrimination through exclusion from employment or occupation in the areas of origin of migrant workers, including gender-based discrimination and dispossession from the means to make a living, will also be analysed since they influence such migrant workers’ entry into employment relationships in their migration destinations.

The types of labour discrimination described in this section are not exhaustive. For example, discrimination in ownership over capital and means of production is an important parameter that can shed light on structural patterns of labour discrimination, but given that such data was not available to the authors and a diversity of data sources would be needed to compile such data, this information is not analysed here in depth.

³ Paragraphs 25, 27, 28, 40 and 47.

1.2.2 Scope of review

This paper opens with a legal review section focusing on the application of standards related to equality of opportunities and treatment. It also refers to relevant comments from the ILO supervisory bodies on Convention No. 111 and the UN treaty bodies. It reviews how legal norms and systems comparatively codify discrimination in the world of work.

Where academic sources or documentation from WIF are not available, the paper may occasionally refer to other journalistic sources. The timeline under review includes the last 20 years – from 2000 to 2020.

Documentation collected under the WIF Programme covered Bahrain, Bangladesh, India, Jordan, Kuwait, Lebanon and Nepal. Research undertaken by the Inequality and Poverty Research Programme from the Department of Anthropology of LSE refers to India.

The section outlining recommendations is inspired by the discussions of academics, practitioners and officials as part of a round table called Labour at the Margins: Action for Non-discrimination and Inclusion, organized jointly by the Institute for Human Development and LSE's Inequality and Poverty Research Programme on 27–28 January 2020.

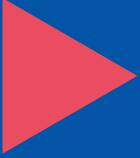
1.2.3 Limitations

This paper refers to and focusses more on some countries while the examples and literature cited on discrimination against migrant workers in other countries is somewhat limited. This is

due to the field of regional specializations of the authors, but also the absence of academic literature in relation to some of the countries. For example, the legal section (Chapter 2) includes information on Bahrain, Bangladesh, Jordan, Kuwait, India and Nepal. However, the section reviewing the literature on specific forms of discrimination (Chapters 3 and 4) contains limited references to the Gulf Cooperation Council (GCC) countries.

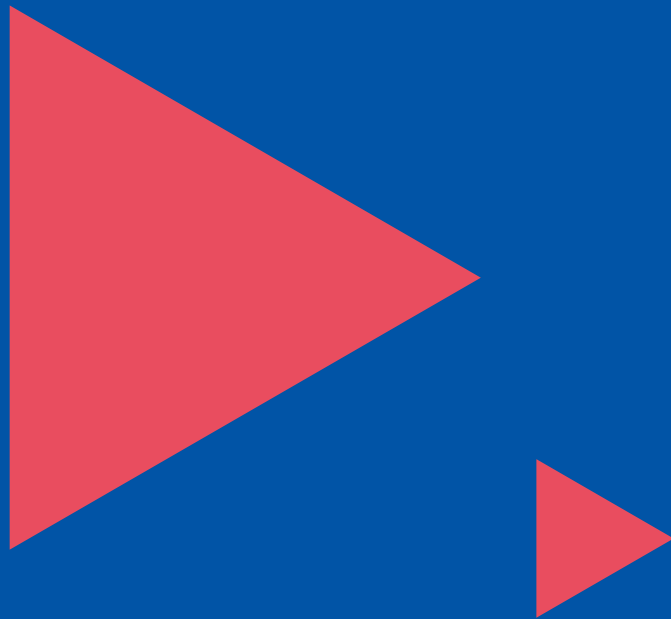
This paper sometimes uses the terms scheduled castes (SCs) and scheduled tribes (STs), and occasionally other backward classes (OBCs), the official denominations employed by the governments of India and Nepal. However, these terms are not commonly used by those to whom these denominations are ascribed. Moreover, the euphemistic nature of these denominations is usually considered discriminatory by them (Battachan 2006, 3). Those who are referred to as SCs, for instance, often prefer the term Dalits, and those called STs by the Government of India prefer being addressed as Adivasis⁴ while their counterparts in Nepal identify as Janajati. Other more specific terms are also used. Authorities of certain States contest these self-denominations. This paper will refer to people from these communities as SCs, STs and OBCs when describing official census information, articulating arguments for officials who reject the use of such terms and quoting studies that use such terms. However, the paper will also quote other terms depending on how they are used and reported by those who face discrimination and how they are used in quoted academic literature.

4 With some exceptions in northeast India.



2

Context of labour discrimination at the national level



2.1 Bahrain

2.1.1 National law and policy

Bahrain has ratified Convention No. 111 and is party to the CEDAW. The Constitution of Bahrain provides for equality before the law and prohibits discrimination on the basis of sex, origin, language, religion or creed.⁵ In 2018, the 2012 Labour Law for the Private Sector was amended to include a prohibition of discrimination on the grounds of sex, origin, language, religion or belief among workers under the scope of the law.⁶ A penalty has been included for any employer or his representative who violates the provisions. The Labour Law does not apply to domestic workers or workers in the agriculture sector. Section 29 under this law prohibits discrimination against women, and section 39 prohibits discrimination in wages on the basis of sex, ethnic origin, language, religion or belief. The provisions fail to prohibit all forms of direct and indirect discrimination on all grounds set out in Convention No. 111 and in all aspects of employment and occupation, including between co-workers.

The 2012 Labour Law for the Private Sector restricted the employment of women in certain jobs and occupations, including those involving night shifts; however, the law was amended in 2020, permitting women to work in all jobs and occupations at night. A Supreme Council of Women has been established and a National Plan for the Advancement of Bahraini Women (2013–22) created to promote equal opportunities between Bahraini men and women. Bahrain also established a National Institution for Human Rights in 2009. In October 2020, The Justice, Islamic Affairs and Endowments Ministry and the Labour Market Regulatory Authority (LMRA) signed a memorandum of understanding (MOU), to help provide administrative assistance to expatriate workers for the filing of labour lawsuits online.

2.1.2 CEACR comments

The individual case of Bahrain was discussed by the ILO Conference Committee on the Application of Standards (CAS) in 2017⁷ and 2018,⁸ and the country received a direct contacts mission due to its failure to implement Convention No. 111.⁹ Issues of concern largely centred on the mass dismissal of workers who had gone on a strike or were involved in peaceful demonstrations calling for social and economic change during the 2011 Arab Spring, but also sex-based discrimination,¹⁰ the absence of legal protection and measures for the protection of workers and the situation of migrant workers in Bahrain. The CEACR observations over the past decade demonstrate that some progress has been made in the areas under the direct focus of the CEACR and CAS, but that a great deal more needs to take place to satisfy the requirements of the Convention.

Domestic workers

The CEACR has repeatedly raised concerns about the exclusion of domestic workers from the Labour Law for the Private Sector (2012).¹¹ It has also noted the absence of provisions prohibiting discrimination on the basis of race, colour, political opinion, national extraction and social origin in provisions covering wages and termination of employment. The government has repeatedly stated that no complaints on the basis of discrimination against nationals or expatriate workers have been filed. The Committee remained concerned that the amended Labour Law (as per proposed amendments in 2018) omitted: (i) a comprehensive definition of discrimination; (ii) a prohibition of direct and indirect discrimination; (iii) protection against discrimination in employment and occupation based on all the seven grounds provided for in the Convention; and (iv) protection extending to all aspects of employment and occupations (including access to vocational training,

5 Article 18.

6 Section 2.

7 Observation (CEACR) – adopted 2016, published 106th ILC session (2017).

8 Observation (CEACR) – adopted 2017, published 107th ILC session (2018).

9 Information extracted from/based on comments from the CEACR on Convention No. 111 and includes specific references to relevant CEACR comments and CAS, as the case may be.

10 While the use of the word “gender” is more comprehensive than the word “sex”, we have used sex to denote a legal category commonly used in the countries covered in this paper.

11 Observation (CEACR) – adopted 2012, published 102nd ILC session (2013).

employment and certain specific occupations and terms and conditions of employment). The law was also silent on remedies available to victims of discrimination; it only covers discrimination between an employer or his/her representative and a worker, and not discrimination between workers.

Migrant workers

The CEACR repeatedly raised concerns around the new Flexi Scheme, the *kafala* sponsorship system,¹² and the inadequate protection of migrant workers, including migrant domestic workers, against discrimination – on the grounds set out in the Convention. The Labour Market Regulatory Authority (LMRA) continued to permit employers to include limitations on workers' right to transfer to another employer through their employment contracts. While the right to transfer was guaranteed by law, the LMRA did not take into account the conditions set out in an individual employment contract which limit a worker's right to transfer. Although migrant workers who have been subjected to abusive practices can request a transfer without observance of the fixed conditions or legal deadlines, the government has stated that no such cases had been reported to the LMRA. The electronic system that registered transfer requests did not accept registration of requests that do not meet the conditions and rules under the law. The CEACR has continued to raise concerns around the exclusion of migrant workers from a number of provisions in the labour and social protection laws, which have reportedly resulted in poor working conditions, unsafe work environments, excessively long work days, extremely low wages and exclusion from most social security benefits. The situation for domestic workers was aggravated due to their exclusion from labour inspection. The Committee has repeated concerns about the Flexi work scheme's weaknesses, in that it excluded skilled workers and workers who escaped abusive employers, domestic and agricultural workers; its costs were prohibitive (the total cost for two years was 1,169 dinars, while the average salary of migrant workers is less than 200 dinars a month); and one of the conditions was that migrants had to be in

possession of a valid passport in order to benefit from the scheme – something most migrant workers in an irregular situation cannot fulfil since their passports are usually confiscated by their employer. The Flexi permit scheme was neither meeting the Government's expectations nor meaningfully improving mobility for migrant workers as a whole. The Committee noted that the objectives of the scheme had therefore come into question. The introduction of a "wage improvement protection system", which requires bank transfers for salary payments, may benefit migrant workers, including those in the construction sector, but not domestic workers, who are unlikely to be familiar with the banking system. Adoption of the Tripartite Domestic Workers contract, which regulates the relationship between the labour recruitment agency, the employer and the migrant domestic worker with the aim of preventing exploitation, is expected to help guarantee the rights of domestic workers. However, in practice, this contract is reportedly bipartite, between the agency and employer, given that most domestic workers are illiterate.

Sexual harassment

Because migrant domestic workers are excluded from the Labour Law for the Private Sector 2012, the sexual harassment they face has been reported by civil society organizations (Bahrain Centre for Human Rights, Bahrain Youth Society for Human Rights and Caram-Asia 2008). In a follow-up to a direct contacts mission, the CEACR noted some progress in terms of addressing sexual harassment at work. Section 192 of the Labour Law included an amendment, which instituted penalties for sexual harassment. Although the new provision formally prohibited sexual harassment in the labour legislation, and prescribed sanctions available, it did not clearly define sexual harassment or protect workers from third parties or representatives of the employer.

Sex-based discrimination

The CEACR noted progress in terms of educational achievement of Bahraini women, but that it remained difficult for them to secure access to senior positions in the private

12 An ILO (2017) report focusing on eight countries in the Middle East from 2017 described the sponsorship system as a range of situations giving employers full authority over migrant workers, to decide on their entry into a country, the renewal of residence and labour permits, the termination of contracts, their transfer to another employer, and exit from the country.

sector. The relatively low representation of women in the labour force (39 per cent) was mostly concentrated in entry and middle-level management positions. The CEACR raised concerns about the persistence of patriarchal stereotypes regarding the role of women and men in the family and society, and the under-representation of women in employment and in political and public life, despite measures taken to promote gender equality.

The CEACR has, over a number of years, raised concerns around the application of equality between men and women in all aspects of employment and occupation, regardless of whether they are migrant workers or not. It had previously requested information on specific policies, schemes, statistics and the work of the Supreme Council of Women. In 2018, the CEACR noted that there was ample information provided by the government on steps taken by it to promote equality between men and women, including statistics, details of initiatives launched to encourage women to enter the labour market and for employers to recruit women, and the establishment and functioning of 45 equal opportunity committees in government bodies with the aim of incorporating women's needs within the equal opportunity framework in all areas of employment and achieving equality of opportunity between all employees. The Committee also noted the recent legislative changes that increased maternity leave from 45 days to 60 days, provided unpaid leave for a child under the age of six and offered one month's paid leave in the event of the death of the mother's husband. It repeated requests to avoid reinforcing stereotypes regarding the role of women and men in society and in the family by extending the measures (mentioned above) granted to women to men as well.

Special protection measures

The CEACR had raised concerns over the draft Ministerial Order No.16 of 2013 and/or Order No.32 of 2013 which defined work that pregnant and breastfeeding women may not be employed in and which overgeneralized both the areas of work and exposure agents. The draft also omitted certain hazards such as non-ionizing radiation and UV radiation, among others. The CEACR raised concerns that the draft also did not

take into account the principles of prevention and protection provided in ILO instruments on occupational safety and health. Civil groups have highlighted how domestic workers are excluded from all the maternity benefits and provisions under the Labour Law (Mohamed 2020).

Enforcement

The CEACR has raised concerns around the lack of enforcement mechanisms, which render the labour legislation largely ineffective, and the low level of awareness about the procedures for enforcing prohibitions against discrimination and the remedies available.

The Committee noted that there was no functioning tripartite body allowing for the participation of social partners in discussions concerning legislation critical to its members prior to the submission of any proposed amendments to the National Assembly. It also noted the government's failure to consult stakeholders before the launch of the flexible work pilot scheme and that the absence of genuine social dialogue seriously hinders the application of the Convention.

2.1.3 Additional discrimination in law and in practice

Migrant workers

With approximately 1.3 million residents, and 77 per cent of the workforce being migrant workers, Bahrain earned a reputation for being one of the few countries of destination in the Gulf interested in improving migrant labour practices (NA 2019; Human Rights Watch 2012). However, gross violations of workers' rights remain widespread and reports of suicide rates among migrant workers have been alarmingly high (NA 2019; Human Rights Watch 2012). There is no minimum wage for migrant workers in the private sector, so wages are typically low. Working hours are also excessive and many migrant workers report physical and psychological abuse (NA 2019; Human Rights Watch 2012). Withholding of wages is common – often for months – forcing workers to take loans to meet their basic needs. This effectively forces many migrants to accept abusive working conditions. The CEACR has reported the withholding of wages.¹³ Such practices should ideally be prosecuted as cases

¹³ Observation (CEACR) – adopted 2017, published 107th ILC session (2018).

of trafficking under Bahraini law, but have instead been dealt with as administrative labour law violations (United States Department of State 2018).

Migrant workers in construction are often housed in dorm-style accommodation in labour camps that tend to be cramped and dilapidated, with insufficient sanitation, running water or other basic amenities (Human Rights Watch 2012). Most workers still rely on an individual or a company to be in charge of the legalities of their stay in the country despite attempts to change the traditional *kafala* model of sponsorship.

Bahrain imposes serious restrictions on freedom of expression, and there have been a large number of arrests and prosecutions of individuals criticizing state authorities or political figures, including through social media.¹⁴ Despite the extreme restrictions on the right to free assembly, close to 100 migrant workers held a rally in Sanad in July 2017. The workers called for the immediate payment of their salaries, which had been withheld for up to five months. Bahraini officials and representatives from the embassies of India and Bangladesh agreed on a temporary solution, but it did not resolve the underlying problems.

Discrimination against Asian migrant workers by Bahrainis is also widespread, and there have been reports that abuses from Bahraini society in general are common (ILO 2017, 12–13; Human Rights Watch 2012b). During the Arab Spring, violent attacks against South Asian migrant workers have been reported (Human Rights Watch 2012b). Recently, an MP announced that he would present a proposal to amend the Labour Law for the Private Sector, to favour Bahraini citizens in recruitment processes and prioritize the terminations of foreign workers (Ibrahim 2020). It has been reported that even when Bahrainis sympathize with migrant workers, it is restricted to expressing pity rather than espousing a belief that migrant workers should be entitled to the same rights – such as decent wages, housing and health – as nationals. It is commonly believed that migrant workers

crowd out the job market and available services (NA 2014).

Migrant domestic workers

Domestic workers continue to lack legal protections and enforceable rights, leaving them extremely vulnerable to racial and/or sex-based discrimination, abuse and exploitation. In addition to the mandatory contract for domestic workers being largely bipartite between recruitment agencies and employers, it does not provide any minimum standards, such as working hour limits, rest hours, weekly days off or minimum wages – these aspects of the employment remain entirely at the discretion of the employer. Reports of abuse and exploitation are widespread, and remedies are weak and inefficient.¹⁵ Significant non-compliance with the new contract has also been reported. Most recruitment agencies did not comply or only partially complied with contract regulations. The LMRA continues to allow employers to hire domestic workers directly, and those who do need not provide a standard contract (NA 2020).

Bahrain has increased labour inspections and bilateral cooperation with countries of origin. However, reports indicate that labour inspectors tend to be primarily involved in workplace controls aimed at arresting, imprisoning and repatriating workers in an irregular situation from the standpoint of immigration law.¹⁶ There are also reports of trafficking of girls and women into Bahrain for the purpose of forced labour and/or sexual exploitation. The fear of retribution by employers and the risk of being detained or deported prevent many female victims of trafficking from filing complaints.¹⁷ At the same time, conviction rates for trafficking remain low. Human rights abuses that would typically indicate forced labour or trafficking, such as the withholding of passports or wages, are also usually dealt with as labour law violations (European Centre for Democracy and Human Rights 2019). This reinforces the hierarchy and power of employers over migrant workers.

14 Human Rights Council, CCPR/C/BHR/CO/1.

15 Human Rights Council, CCPR/C/BHR/CO/1.

16 Observation (CEACR) – adopted 2017, published 107th ILC session (2018) Labour Inspection Convention, 1947 (No. 81) – Bahrain (Ratification: 1981).

17 CERD/C/BHR/CO/7.

Bahrain's anti-trafficking policies and actions conflate sex work and trafficking, with the effect of ignoring the human rights of sex workers. While some sex workers have been trafficked into the work, not all have been. The law in Bahrain criminalizes both sex trafficking and sex work, rather than addressing the challenges and protection needs of sex workers. When discovered, sex workers are arrested, jailed and deported. This approach has (inadvertently) established barriers to sex workers' reporting violence against them, as they fear arrest and deportation (NA 2020).

2.2 Bangladesh

2.2.1 National law and policy

Bangladesh has ratified most international conventions with provisions related to non-discrimination and equality. It is party to the CEDAW and the ICRMW. Similarly, it has also ratified Convention No. 100 and Convention No. 111. Bangladesh's Constitution includes a general prohibition of discrimination and calls on the State to endeavour to ensure equality of opportunity for all citizens, through the adoption of effective measures for the removal of social and economic inequalities.¹⁸ It also calls on the State to ensure equality of opportunity and participation of women in all spheres of national life and for women to enjoy equal rights with men.¹⁹ Part III of the Constitution covering Fundamental Rights guarantees that "All citizens are equal before law and are entitled to equal protection of law"²⁰ and that the State shall not discriminate against any citizen on the basis of religion, race, caste, sex or place of birth.²¹ In relation to public employment, the Constitution guarantees that the State will not discriminate among its citizens on the basis of religion, race, caste, sex or place of birth. It also enables the State to devise affirmative action measures to secure the representation of minorities.²² No such guarantees for equal opportunities and

non-discrimination are provided for private sector employment.

Bangladesh does not have a specific anti-discrimination or equality legislation. Upon the recommendation of the Bangladesh Law Commission, a draft Elimination of Discrimination Act was prepared in 2014. This bill is still being reviewed by the law ministry. With the exception of a provision guaranteeing equal wages for work of equal value between men and women,²³ and the prohibition of discrimination against workers based on their membership in trade unions,²⁴ there are no equality or non-discrimination provisions in Bangladesh's labour laws. Many groups of workers, such as domestic and agricultural workers, also remain beyond the scope of the Labour Act, leaving large numbers of workers, particularly those from tribal groups and marginalized social backgrounds and women, unprotected. The Labour Act leaves a significant gap in legal protection against discrimination on the grounds listed in Convention No. 111 in the private sector.

Bangladesh's National Labour Policy of 2012 included in its objectives the elimination of discrimination between men and women, and among workers, as well as the generation of employment and discrimination-free workplaces for people from tribal communities, minority races, ethnic and other communities, as well as persons with disabilities and marginal and underprivileged groups. It also aimed to eradicate discrimination in wages between men, women and underprivileged groups. Special measures were proposed to end discrimination against women in their workplaces and to create safe, healthy and women-friendly spaces so as to in turn improve female labour force participation. The 2019 draft National Jobs Strategy included a chapter on "Employment of Women and Youth" but no other marginalized groups. The chapter on women covers various aspects of women's employment, including improving their participation in the labour market through

18 Bangladesh Constitution, Article 19.

19 Bangladesh Constitution, Article 19(3) and 28(2).

20 Bangladesh Constitution, Article 27.

21 Bangladesh Constitution, Article 28.

22 Bangladesh Constitution, Article 29.

23 Bangladesh Labour Act, Article 345.

24 Bangladesh Labour Act, Article 195.

various measures, strengthening women's employment status and their status at the workplace, wages and opportunities for mobility. The strategy for youth employment fails to acknowledge or address the heterogeneity of youth entering the labour market, including marginalized youth and those subject to structural and societal discrimination on the basis of social origin, race, national extraction, ethnicity or other grounds.

Over the past decade, a number of legislative provisions and policies have been enacted to support women in employment and promote gender equality. The Labour (Amendment) Act of 2013 increased maternity leave to six months; the Persons with Disabilities Rights and Protection Act (2013) provided for the rights of men and women with disabilities in employment; and the Domestic Workers Protection and Welfare Policy (2015) provides legal protection, social benefits, minimum age restrictions and maternity leave to domestic workers (however, it is not on par with workers' rights under the Labour Act). Bangladesh has also issued a Domestic Violence (Prevention & Protection) Act (2010) and a Women and Children Repression Prevention Act (2000) to advance the situation of women and ensure their protection from violence. Bangladesh also issued a Gender Equity Strategy (2014), the Climate Change and Gender Action Plan (2013), National Action Plan for the Implementation of the National Women Development Policy (2013), National Action Plan to Prevent Violence against Women and Children (2013–2025), Domestic Violence (Prevention and Protection) Rules (2013), National Plan of Action for Combating Human Trafficking (2012–2014), and National Action Plan for Adolescent Sexual and Reproductive Health. Bangladesh's Vision 2021, a five-year development plan, also includes the promotion of women's rights.

Despite these frameworks, patriarchal attitudes persist in Bangladesh. Existing rules, policies and plans promoting women's empowerment and addressing discrimination are rarely implemented due to underlying gender biases and systemic gender discrimination.²⁵ Despite the 2013 amendments, the Labour

Law continues to exclude women from employment in certain sectors and jobs that are considered inappropriate for adolescents and women (including working around, cleaning and maintaining machinery in motion), from employment that involves machines considered "dangerous", as well as underground or underwater work.²⁶ There also continues to be an absence of legislation prohibiting sexual harassment against women in the workplace.²⁷

2.2.2 Jurisprudence

A number of high-profile court cases concerning discrimination have influenced the treatment of women and other groups in the world of work in Bangladesh.

Sex-based discrimination

While the Female Labour Force Participation (FLFP) in the country has increased from 8 per cent in the mid 1980s to more than 35 per cent in 2016/17, women's participation is still much lower than that of males, the rate of growth of the participation rate has slowed down, and women are found to be concentrated in low-paying and less productive activities and even in unpaid family work. The benefits of structural transformation have not been shared equally (e.g. there is greater concentration of women in agriculture) (Bidisha 2019). These factors have prompted an increase in women's labour migration both within the country and abroad. The issue of sexual harassment at the workplace and in educational institutions was identified by the Supreme Court in 2009 (High Court Division). The Court drew on the CEDAW to request the government to formulate laws specifically tackling sexual harassment at work and educational institutions, and issued a set of guidelines to be followed until a law has been passed (*Bangladesh National Women Lawyers' Association (BNWLA) v. Bangladesh*). Upon a writ petition by BNWLA, the Court subsequently determined that sexual harassment outside of work and educational institutions must also be addressed, and it issued a supplementary set of guidelines.

25 CEDAW, CEDAW/C/BGD/8.

26 See Articles 87, and 39, 40 and 42 of the Bangladesh Labour Act.

27 Please note that High Court Guidelines exist on sexual harassment – see Jurisprudence section.

Attempts to coerce or impose a dress code on women and the use of derogatory remarks were deemed forms of gender-based discrimination and sexual harassment by the Supreme Court in 2010. A public interest case was brought to the Court concerning an Upazila Education Officer, for using derogatory and sexually coloured remarks against a school headmistress regarding her clothing and for directing all female teachers to wear headscarves (*Advocate Md. Salahuddin Dolon v. Government of Bangladesh and Others* (2010)).

The Supreme Court ruled that the requirement that women candidates applying for the position of health assistants in the Health Directorate of the government be married and that they submit an attested copy of their marriage registration certificate is unlawful as it propagates sex-based discrimination. No such requirement exists for men, and it is considered unrelated to the functions of the job. (*BLAST & BNWLA v. Ain o Salish Kendra and Mossammat Nasrin Akhter*)

In 2000, the Supreme Court determined that sex workers had a constitutional right to life, liberty and protection under the law and that they cannot be arbitrarily deprived of their right to livelihood (an important facet of the right to life).²⁸ The Court also held that sex work was not illegal, but acknowledged that the use of girls under 18 years of age in the occupation is a crime under the Suppression of Immoral Traffic Act 1933 and the Penal Code 1860. The Court held that residents of brothels could not be arbitrarily evicted or subjected to degrading treatment in violation of their constitutional rights. The Court also determined that illegal trespassing into brothels is a violation of the right to privacy.

Directions were issued by the Supreme Court in 2011 to the government to register domestic workers, extend regulations on working hours and recreation benefits to domestic workers, and prohibit the employment of children under the age of 12 in any form of employment in

the domestic sector. This eventually led to the formulation of the Policy on Domestic Work.²⁹

In 2020, the High Court Division of the Supreme Court observed that the National Human Rights Commission was negligent and derelict in the performance of its duties, for failing to ensure justice for victims of human rights abuses, especially in the case of the brutal torture of an illegally employed domestic worker called Khadiza, a twelve-year-old girl.³⁰ The Court found in its investigations that the National Human Rights Commission (NHRC) had been derailed from fulfilling its mandate under the NHRC Act. It was reported that police concealed information and did not record the case. The NHRC had failed to have a strategic plan to detect violations of human rights and resolve disputes on violations. In what was considered an unreasonable timespan of five and half years, the NHRC sent as many as 26 letters and orders to the Home Ministry seeking reports, but no action was taken (Rahman 2020). The Court ordered the NHRC to raise matters to the court any time the government failed to abide by its recommendations.

National extraction and ethnicity

All members of Urdu-speaking communities were deemed nationals of Bangladesh, with the right to vote and be issued national identity cards, under a 2008 Supreme Court ruling. In 2003, a landmark case, the Abid Khan decision, held that ten Urdu-speaking petitioners born both before and after 1971 were Bangladeshi nationals pursuant to the Citizenship Act of 1951 and thereby directed the government to register them as voters.³¹ In 2008, the Supreme Court reaffirmed that all members of the Urdu-speaking community were nationals of Bangladesh and that all who wanted to be, should be permitted to enroll in electoral rolls and be given National Identity Cards.³² In addition to voting, citizenship provides a set of rights, access to services (including free

28 *Bangladesh Society for Enforcement of Human Rights (BSEHR) v. Government of Bangladesh and others*, Ruling of Supreme Court on 14 March 2000 based on Writ Petition No. 2871 of 1999.

29 *Bangladesh National Women Lawyers' Association (BNWLA) v. Government of Bangladesh and others*, Ruling of Supreme Court in 2011 based on Writ Petition No. 8769 of 2010.

30 *Children's Charity Bangladesh Foundation v. NHRC*, 2019.

31 *Abid Khan and others v. Govt. of Bangladesh and others*, Supreme Court decision of 5 May 2003 based on Writ Petition No. 3831 of 2001.

32 *Md. Sadaqat Khan (Fakku) and others v. Chief Election Commissioner, Bangladesh Election Commission*, Supreme Court decision on 18 May 2008 based on Writ Petition No. 10129 of 2007.

education) and public sector jobs, the ability to own property, and the right to establish and register a business. The court ruling significantly reduced the number of stateless persons in Bangladesh and assisted many Urdu speakers in leaving camps in urban centres, where they had been forced to live since gaining independence from Pakistan.

2.2.3 CEACR comments

Legislation and policies

The CEACR has focused on Bangladesh's failure to adopt legal prohibitions of direct and indirect discrimination on the grounds listed in the Convention, in national laws, particularly the Bangladesh Labour Act, in accordance with Article 1(1)(a) of Convention No. 111. This has been a recurring observation for a number of years. Despite repeated CEACR observations, Bangladesh has failed to fulfil the agenda of the Bangladesh Labour (Amendment Act) of 2013 and later reforms to incorporate the principles of the Convention. The CEACR notes the inadequacy of Constitutional provisions for non-discrimination in fulfilling the requirements of Article 1 of the Convention and the failure of the government to adopt the anti-discrimination legislation that was drafted in 2014/15.

Domestic work

The exclusion of domestic work from national labour laws has been raised as a concern by the CEACR over a number of years. In response, the government has indicated that such workers will be gradually brought under the law as it becomes feasible from an enforcement perspective. The CEACR has reiterated that the scope of the Convention applies to all workers, including domestic workers, and that they should be afforded equal treatment in all aspects of employment. It has also noted the particularly difficult situation of women domestic workers, who are vulnerable to violence, abuse, food deprivation and murder, and that crimes of this nature against domestic workers go unreported, as victims have limited access to justice and redress.

Sexual harassment

The CEACR has paid particular attention to the situation of women and discrimination on the basis of sex over a number of years, and in particular, the lack of effective measures to prevent and prohibit sexual harassment at

work in Bangladesh. It has, however, recognized various governmental actions to prohibit violence against women, including the High Court ruling in 2009 on sexual harassment, the initiatives of the Ministry of Women and Children Affairs, and the implementation of the National Plan for the Prevention of Violence against Women and Children for 2013–25. Nonetheless, it noted that no actions specifically targeting sexual harassment in employment and occupation have been taken by the government despite existing evidence, including data from the Bangladesh Bureau of Statistics indicating that violence against women in the form of verbal and physical abuse takes place among industrial workers. It has also made note of reports from the UN Special Rapporteur on violence against women, which stated that sexual harassment was commonplace in working environments and sometimes justified as “part of the culture”. It emphasized that there had been a failure to implement the High Court guidelines on sexual harassment in the workplace. It should be noted that many women workers are internal migrants within Bangladesh.

Sex-based discrimination

The CEACR took note of the initiatives of the government to advance the situation of women vis-à-vis men in the world of work, including through the National Women Development Policy (2011), the Rural Development and Cooperatives Division, the Seventh Five-Year Plan (2016–20) and its gender targets across multiple fields of education and employment, various microcredit, entrepreneurship, skills training and employment programmes, the introduction of quotas for female employment in the public service (15 per cent) and in primary schools (60 per cent), and the granting of permission for women to join the armed forces. It also noted an increase in women's participation in tertiary education and programmes to support women in technical and vocational education and training (TVET) activities. Nonetheless, it has also observed the substantial gender differences in labour force participation rates, women's greater involvement in vulnerable and informal employment, the higher unemployment rate among women and persistent gender-based wage inequalities. Concern has been raised over the persistent concentration of women in the informal economy, the underrepresentation of women and girls in non-traditional fields of study and vocational areas, and the lack of

implementation of existing laws on the rights of women and girls, due partly to patriarchal attitudes, and the limited efforts made by the government to eliminate such stereotypes and remove barriers to women's equal enjoyment of rights. Persistent discrimination against pregnant women and the lack of implementation of the mandatory six months' maternity leave in the private sector, along with the specific situation of rural women, with limited access to education, land ownership and financial credit from public banks as a result of laws and policies that do not recognize them as farmers, were also noted with concern. It also highlighted the high number of girls dropping out of school to marry early, the low value attached to girls' education, and the impact of poverty and the long distances kids have to travel to reach schools in rural and marginalized communities on girls' educational opportunities.

Protective measures

The CEACR has, for over a decade, raised concerns about the discriminatory restrictions on women's employment. Section 87 of the Labour Act provides that the same restrictions that apply to adolescent workers under sections 39, 40 and 42 of the Labour Act also apply to women, effectively preventing the entry of women into certain occupations.

Rights of persons with disabilities

In recent direct requests, the CEACR has noted progress for the rights of persons with disabilities (additional ground), with the adoption of the Rights and Protection of Persons with Disabilities Act, 2013 and provisions on non-discrimination in employment.³³ It also noted that in practice, employment quotas in place for persons with disabilities were inadequate and not properly implemented, and that persons with disabilities still face difficulties in accessing the labour market.

Social origin

The issue of caste-based discrimination has appeared in the CEACR's Direct Requests consistently over the last two decades. Concerns have been raised on the persistence of the caste system, which results in Dalit workers being segregated in socially stigmatized service

sectors and the severe difficulties they face in accessing employment outside those sectors. It has also noted reports of the multiple forms of discrimination faced by Dalit women, including abuse and violence.

Indigenous peoples

The Committee has also raised concerns about indigenous peoples' access to economic and livelihoods opportunities, and the challenges they face in relation to equality of treatment in employment, including sexual harassment at work. In this regard, it has taken note of government policies and programmes, the quota system for minority groups and ILO technical cooperation projects. It also raised concerns that the existing 5 per cent quota for minority groups in the public service is not being filled, despite the government commitments on paper, due to a lack of proper implementation of policies. It has also made note of the reports of a lack of legal recognition of indigenous peoples, and reported discrimination and restrictions on the civil and political rights of indigenous peoples, particularly in relation to land rights.

Refugees and migrant workers

Taking note of the recent arrival of a large number of Rohingya refugees from Myanmar, the Committee reiterated concerns raised by the CEDAW about the lack of access to education and employment, freedom of movement of refugees, the multiple forms of discrimination they faced, including women and girls, and that there was an increase in the trafficking of Rohingya women and girls. It also noted the high number of migrants in Bangladesh (19.3 per cent of the total population in 2017) and requested the government to take necessary steps to ensure that migrant workers and refugees are protected against discrimination on the basis of race, colour, sex, religion or national extraction in employment and occupation. It also references the CEACR's General Observation of 2018 on discrimination on the basis of race, colour and national extraction.

The Committee has also repeatedly raised concerns about training of labour inspectors on non-discrimination issues and encouraged the government to avail itself of ILO assistance to strengthen their capacity.

³³ Rights and Protection of Persons with Disabilities Act, 2013, Section 37(1).

2.2.4 Additional areas of discrimination in law and in practice

Sex-based discrimination

While much progress has been made in advancing the situation of women in the world of work over the past several decades, gaps remain in practice. The six-month maternity period is not being fully implemented and discrimination against pregnant women persists in the private sector.³⁴ There is a low participation rate of women in the formal economy and a persistent wage gap between women and men in most sectors; legal barriers to forming unions, especially in industries with a high concentration of women, including agriculture and domestic work, hinder women's abilities to collectively represent their rights and interests at work. Women sex workers remain outside the purview of formal legal protection and without labour rights despite the landmark High Court case. Trafficking of women and girls remains prevalent in Bangladesh. This is a result of structural inequalities, sex-based discrimination and insufficient social protection and social and economic support for vulnerable groups. Gender policies in themselves tend to only cover the difference between men and women; however, men and women from each different socio-economic group are diverse and require separate attention and strategies.

Migrant workers

The Bangladesh Government has not provided sufficient protections to its migrant workers to prevent discriminatory treatment abroad. Bangladesh has set a minimum referral wage for domestic workers in the Gulf of roughly US \$200 per month, which is the lowest minimum salary negotiated by countries of origin in the region. Despite the establishment of labour wings in its foreign missions and the appointment of labour attaches, regional embassies could do more to provide adequate protections and assistance to many Bangladeshi nationals who suffer from discriminatory treatment in destination countries, including women workers. It could also

negotiate provisions that could begin dismantling the *kafala* system through bilateral, collective agreements (for example, enabling occupational mobility after first employment). While Bangladesh has adopted a policy on expatriates' welfare and overseas employment, it is not fully gender responsive, and its implementation could be improved.³⁵ The transparency and accountability of the Wage Earners' Welfare Fund could also be improved (WEWF and ILO n.d.).

Studies have shown that a significant driver of migration is based on structural and individual sex-based discrimination (Islam 2019). One study has shown that a quarter of women migrant workers were separated, deserted or divorced by their husbands, were victims of family violence and chose to migrate to secure a steady income to support their children and families. Some women were motivated to migrate due to the widespread negative social attitudes towards women in employment and the wage disparity between men and women in Bangladesh. Women between the ages of 25 and 45 are legally able to migrate for domestic work.³⁶ While this aims to protect younger women, in effect, it leaves younger women wishing to migrate for domestic work more vulnerable to discriminatory practices and abuse, as they have to rely on irregular and informal migration channels.

Upon return to their home country, women migrant workers continue to face family and social reintegration problems, including being stigmatized for allegedly lacking moral virtues. This is both a symptom and consequence of gender-based discrimination and prejudice, and inadequate protection and support from the State. In terms of migrant workers within the territory of Bangladesh, there are no anti-discrimination laws or policies protecting documented and undocumented workers.³⁷ Reports of sexual and gender-based violence, as well as labour exploitation and child labour, among undocumented nationals of Myanmar and Indian migrant workers working in the State are common.

34 CEDAW, [CEDAW/C/BGD/8](#).

35 Committee on the protection of the Rights of All Migrant Workers and Their Families, [CMW/C/BGD/CO/1](#).

36 In 2006, the Ministry of Expatriates' Welfare and Overseas Employment (MoEWOE), through notification, reduced the age for the migration for women garment and domestic workers from 35 years to 25 (Asis 2004).

37 Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families, [CMW/C/BGD/CO/1](#).

Social origins

Dalits in Bangladesh continue to be forced to undertake certain types of labour as a consequence of their assigned caste status and are almost exclusively working in “unclean” jobs in urban areas. Some jobs they are frequently forced to undertake are street sweeping, manual scavenging and burying the dead. Dalits who live and work in tea plantations too face specific forms of discrimination. Many live as bonded labour or are paid extremely low wages (BDERM, NNMC and IDSN 2018). Most Dalits are stigmatized as a result of their profession and experience isolation and social exclusion.³⁸ More than 80 per cent of Dalits experience discrimination while seeking admission into schools, and child labour is still a significant problem in Dalit communities (BDERM, NNMC and IDSN 2018). Within the Hindu community, the Dalit population remains especially marginalized and subject to discrimination by the majority population. They face innumerable barriers to accessing employment outside of “traditionally Dalit” sectors (Minority Rights Group International 2016), and they generally do not receive equal treatment or legal protection when a crime is committed against them, as most cases are settled or negotiated arbitrarily or on a discriminatory basis, often through informal authorities (BDERM, NNMC and IDSN 2018). The Dalit status is closely related to labour migration, as socially permissible occupations for Dalits often require some form of mobility within the country and Dalits also seek to escape discrimination in their home areas through migration.

No national action plan or policy exists for the empowerment of Dalits or to address caste-based discrimination in Bangladesh. Nor has the government outlawed manual scavenging or created safe working environments for manual scavengers, who tend to be workers from the Dalit community. This means sewer cleaning remains an incredibly unsafe and risky occupation that can lead to death by asphyxiation from noxious gas in septic tanks and sewers, and it continues to be highly stigmatized. The National Human Rights Committee has only begun to take up work concerning Dalits in recent years (National Human Rights Commission 2018).

Indigenous peoples

The Chittagong Hill Tracts (CHT) tribes have for decades faced discrimination, forced displacement, assaults, evictions and destruction of property by both Bangladeshi security forces and Bengali settlers from the mainland. This, along with a severe dearth of local opportunities for economic security, has contributed to the growth of internal and external migration among minority groups seeking employment. Indigenous women and girls have faced multiple forms of discrimination due to their gender, indigenous identity and socio-economic status, and are especially vulnerable to sexual and gender-based violence (National Human Rights Commission 2018).

Some progress has been made over the past two decades, including the establishment of the Chittagong Hill Tracts Peace Accord and the implementation of certain of its provisions, such as: the creation of the Chittagong Hill Tracts Ministry; the establishment of the Chittagong Hill Tracts Regional Council; and the establishment of a Land Commission for the settlement of land issues. The Seventh Five-Year Plan also includes objectives for the CHT and ethnic minorities, in terms of improving access to education and livelihood opportunities in poverty-stricken areas. Nonetheless, there are no laws or policies providing for equality of opportunity and treatment in all aspects of employment and occupation for tribal groups, ethnic minorities or on the basis of race. In practice, CHT and other ethnic minority groups remain marginalized in practice and concentrated in jobs in the informal economy, such as in beauty salons, where the conditions of employment are worse and workers are more vulnerable to exploitation and abuse. The indigenous status also correlates with labour migration for specific occupations, such as beauticians and hospitality, within the country or abroad.

2.3 India

2.3.1 National law and policy

India is party to the CEDAW, and it has ratified Convention Nos 100 and 111. India undertook a large labour law reform process in 2018–20, which entailed the reform and consolidation of around 42 disparate labour laws into four

³⁸ Human Rights Council, A/HRC/31/56.

national codes – the Wages Code (2019); the Occupational Safety, Health and Working Conditions Code (2020); the Social Security Code (2020); and the Industrial Relations Code (2020). Many of the laws that were consolidated into codes directly or indirectly relate to inter-state and intra-state migrant workers. The Wages Code contains provisions prohibiting discrimination in wages between workers on the basis of gender, but not social origin, ethnicity or religion.³⁹ It also prohibits discrimination on the basis of sex in recruitment and conditions of employment, except where the employment of women is prohibited or restricted by law.⁴⁰ There are no other non-discrimination provisions. As such, the law fails to fully protect men and women against discrimination in all aspects of employment and occupation. The new body of labour law also fails to prohibit direct and indirect discrimination on the basis of other grounds listed in the Convention or forms of intersectional discrimination. India has a Sexual Harassment of Women at the Workplace (Prevention, Prohibition and Redressal) Act (2013), but does not prohibit harassment at the workplace on other grounds such as race, ethnicity, religion or social origin.

In the reform process, the government removed specific restrictions on women's work, including the one regarding women working at night. The new Occupational Safety, Health and Working Conditions Code retains a reference to special restrictions on women's employment, but does not expressly prohibit women's employment in any specific occupations and activities or at any specific times, such as at night, as the former legislation did – it leaves decisions related to this to the discretion of state authorities.⁴¹ Domestic work has not been regulated at the national level, but most states have now issued regulations for the employment of domestic workers. India has developed a number of policies for women's empowerment over the years, the most recent being the National Policy for Women (2016).

The Constitution provides for equality among all citizens and prohibits discrimination on the basis

of religion, race, caste, sex, descent, and place of birth or residence with regard to access to public services and state employment.⁴² Provisions mandating affirmative action and quotas also only apply to the public sector. India's 103rd Amendment to the Constitution in 2019 impaired equality of opportunity for scheduled castes and scheduled tribes by adding reservations for 10 per cent of "economically weaker citizens" – a population broadly defined as: persons who are economically poor, or with less than five acres of farmland or a house of less than 1,000 square feet in a town.

The Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act (1989) advances the equal enjoyment of rights by scheduled castes and scheduled tribes, including the reservation of seats in national and state legislatures and posts in the public services. A Prohibition of Employment as Manual Scavengers and their Rehabilitation Act (2013) was also passed with the intention of freeing Dalit workers from socially degrading and dangerous work, rehabilitating those of them formerly employed as manual scavengers and facilitating their social and economic mobility.

A comprehensive Anti-Discrimination and Equality Bill was drafted in 2016; it significantly broadened the categories of what is regarded as discrimination and prejudicial treatment under the law and, if implemented, would extend legal protection to many more individuals and groups. It also included structures and measures for redressal. The Bill has not yet been passed.

Institutions responsible for the implementation of anti-discrimination legislation such as the Scheduled Castes and Scheduled Tribes Act have been established. These include the Ministry of Social Justice and Empowerment, the Union and State Parliamentary Committees on Social Justice, the Ministry of Tribal Affairs, and the National Commissions on Scheduled Castes and on Scheduled Tribes.

39 Wages Code (2019), Article 3.

40 Wages Code (2019), Article 3(2).

41 See articles 43 and 44; women may be employed "with their consent before 6 a.m. and beyond 7 p.m. subject to such conditions relating to safety, holidays and working hours or any other condition to be observed by the employer as may be prescribed by the appropriate Government." Article 44 provides for the development of standards for the employment of women in areas where the appropriate government considers the employment dangerous to women's health or safety.

42 Articles 15 and 16. Note that non-nationals are not covered by these articles.

2.3.2 Jurisprudence

The following judgments do not all directly relate to the world of work, but are illustrative of the broad discrimination and structural barriers to equality faced by groups on the basis of their sex, social origin, race, ethnicity, national extraction, religion or political opinion.

Social origins

The Supreme Court ruled in 2004 that a case concerning offences committed under the Indian Penal Code “on the ground that such a person is a member of a Scheduled Caste or a Scheduled Tribe”⁴³ is applicable only if the offence was committed on the ground that the victim was a member of the Scheduled Caste.⁴⁴ This means the burden of proof required to show that the offence was committed *only* because the victim belonged to a scheduled caste rested on the victim. Consequently, the government reformed the Penal Code to substitute the words “on the ground of”, in Section 3(2)(v), with “knowing that such a person is a member of a Scheduled Caste or Scheduled Tribe”.

In another case concerning scheduled castes, the Supreme Court ruled in 2018 against immediate arrest on commission of offences under the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act (1989) (also known as the SC/ST Act), requiring court-imposed preliminary inquiries and approval before an arrest.⁴⁵ In effect, this judgment restricted the registration of FIRs and possible arrests of persons accused under the Act. The judgment led to widespread protests, which resulted in the government nullifying the judgment through an amendment to the Act. Though the Act was amended, the judgment unwittingly strengthened the impunity of higher-ranked castes (Singh and Ramkumar 2019).

Indigenous peoples

In 1997, the Supreme Court annulled a lease for the exploitation of indigenous forest lands that had been given to a company.⁴⁶ The Supreme Court ruled that the Fifth Schedule of the Indian Constitution forbids the leasing of government lands, tribal lands and forest lands included in the Scheduled Areas to non-tribals or to private companies for mining or industrial operations.

In a similar case, in 2013, the Supreme Court ruled that Adivasi communities must have the final call on plans made by a subsidiary UK company for a bauxite mine in Odisha. It clarified that a clear and transparent process to seek the free, prior and informed consent of indigenous communities is required in all contexts where traditional lands and habitats may be affected by upcoming state or corporate projects.

Sex-based discrimination

In 1997, the Supreme Court ruled in the interests of women’s safety by issuing detailed guidelines for employers to follow, to address sexual harassment at the workplace and provide a mechanism for the redressal of the grievances of employees.⁴⁷ These guidelines were eventually codified into national legislation with The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act 2013. Since then, the CEACR has commented on the scope of application of the Act.⁴⁸

In 2020, the Supreme Court held that all female army officers should be eligible for permanent commissions and for placement in commanding roles. Under this ruling, female officers should be at par with their male counterparts when it comes to promotions, rank, benefits and pensions in the defense sector.⁴⁹

43 Penal Code Section 3(2)(v).

44 *Khuman Singh & Others v. State of Madhya Pradesh*, 24 November 2004, Case No. 998.

45 *Dr Subhash Kashinath Mahajan v. The State of Maharashtra*, 20 March 2018, Criminal Appeal No. 416.

46 *Samatha v. State of Andhra Pradesh And Others*, 11 July 1997, Case No. 4601-02 of 1997.

47 *Vishaka & Others v. State of Rajasthan & Others*, 13 August 1997, Case No. 6 SCC 241.

48 *Observation (CEACR) - adopted 2017, published 107th ILC session (2018)*, Article 1(1)(a) of the Convention. Discrimination based on sex. Sexual harassment.

49 *The Secretary, Ministry of Defence v. Babita Puniya & Ors*, 17 February 2020, Civil Appeal Nos 9367–9369 of 2011.

2.3.3 CEACR comments

Social origins

Seasonal migrant workers include men and women from all castes, but it is those at the bottom of the social hierarchy (Dalits and Adivasis especially) who are often found doing the hardest work and facing the worst living conditions (Shah et al 2018).⁵⁰ For decades, the Committee has raised concerns about discrimination on the basis of social origin. It has noted the quotas established in the public sector and the reported progress in filling these quotas, as well as the impact of schemes to foster the education and economic empowerment of scheduled castes.⁵¹ The Committee has noted, however, the absence of evidence of progress beyond filling public quotas. Affirmative action measures in the private sector, including skills training initiatives, voluntary codes of conduct and awareness-raising activities, have also been reviewed and concerns around their effectiveness have been raised. The Committee has also noted efforts included in the Government's 12th Five-Year Plan, but raised concerns that the actions taken were of a very general nature and did not go far enough as to demonstrate how substantive change could be achieved.

The Committee has also raised concerns around the weak enforcement of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act and low rates of conviction for crimes, despite the government having made amendments to the Act in 2015 to strengthen its protections. It has noted that the majority of cases remain pending before courts.

Over many years, the CEACR has raised concerns specifically around the issue of manual scavenging. It has noted that despite the adoption of the Act in 2013, the practice continues and is institutionalized through state practices, with local governments and municipalities continuing to employ manual scavengers.

Gender

Women's access to employment in India is influenced by prevailing stereotypes regarding gender roles, sex-based discrimination, insufficient gender policies and other structural inequalities. The types of paid jobs that women from low-income households can access often entail some sort of migration within the state or outside it. The Committee has, for years, raised concerns over the low participation of women in the labour force and recently raised concerns on the decline of women's participation in both rural and urban areas. It has also raised concerns about the higher unemployment rates among young women, compared to young men, and the concentration of women in agriculture and low-paid employment.

The CEACR has also raised concerns over the practical implementation of the Sexual Harassment legislation, including among workplaces in rural areas and in the agriculture sector. It noted the consolidation of labour codes exercise and recommended that the non-discrimination provisions of the Equal Remuneration Act (1976) be replicated in the new codes.

The CEACR has also raised concerns for many years about the practice of Sumangali, or the "marriage assistance system" in the state of Tamil Nadu. It has raised concerns about the recruitment of girls aged 15–18 to spinning mills, and the delayed payment of wages and other forced labour practices, and urged the government to take more effective measures to abolish the system and regularize the work of the women workers affected.

2.3.4 Additional areas of discrimination in law and practice

Social origins and ethnicity

The lack of a comprehensive anti-discrimination law has, for a long time, stymied any efforts at providing effective and adequate resources and mechanisms to redress the extreme discrimination and disadvantages many groups and people have faced. Caste biases as well as racial and ethnic prejudices and stereotypes

⁵⁰ For more information on the connection between caste and migration, see section 3.1.1.

⁵¹ *Observation (CEACR) - adopted 2017, published 107th ILC session (2018)*, Articles 1–3. Measures to address discrimination based on social origin.

remain deeply entrenched in the minds of wide segments of Indian society, particularly in rural areas.⁵² Such stereotypes are also closely linked with the ways in which migrant identity is perceived.

Existing laws and programmes have failed to eliminate discrimination and violence against members of scheduled castes and scheduled tribes. Labour laws have in fact enabled a watering down of labour rights by enabling the widespread use of casual, contract and outsourcing practices accompanied by weak monitoring and enforcement of protections. These labour practices tend to have the greatest impact on already disadvantaged and vulnerable segments of society in India, particularly Dalits and Adivasis, who are disproportionately represented in informal, low-paid and precarious work.⁵³ Similarly, there is inadequate protection of women and other marginalized groups who are concentrated in poorly regulated sectors, such as domestic work and home work. The inter-state migration provisions in the new Occupational Safety, Health and Working Conditions Code and the former Act have done little in practice to safeguard inter and intra-state migrant workers' rights and protect them from discrimination, bonded or forced labour, and other forms of exploitation. Similarly, despite the abolition of "untouchability" by India's Constitution, Dalits continue to experience segregation in most public spaces as well as in the labour market, particularly in rural areas.⁵⁴

With regard to Adivasi rights, India does not recognize its tribal peoples as distinct groups entitled to special protections. The Armed Forces (Special Powers) Act of 1958 protects members of the armed forces from prosecution and provides wide powers to search, arrest without a warrant, and use force against persons or property in Manipur and other northeastern states inhabited by Adivasis.⁵⁵ Lands traditionally occupied by tribal communities have not been fully recognized by the government in terms of

the rights of collective or individual ownership. In fact, since the introduction of the Forest Act in 1980, tribal communities have been evicted from their land under the Act or in order to allow for private mining activities. There are still many reports of arbitrary arrests, torture and extrajudicial killings of members of the scheduled castes and scheduled tribes by the police, and their frequent failure to protect these groups against acts of communal violence continues.⁵⁶

Reports of an escalation in caste-based violence have also appeared in recent years – including of rape against women and girls and the downplaying, by key officials, of the grave criminal nature of sexual violence against women and girls, particularly Dalit and Adivasi women and girls. This has been taking place alongside the ongoing impunity of perpetrators for serious crimes against women under the Scheduled Castes and Scheduled Tribes Act, and a high backlog of atrocities cases pending court hearings.⁵⁷

India has not implemented effective temporary special measures to accelerate the achievement of substantive equality for women and men from across all marginalized groups in various areas of public and official office. Although quotas for the participation of scheduled castes and scheduled tribes exist, Dalit candidates – particularly women – are frequently forcibly prevented from standing for elections, forced to resign from village councils or other elected bodies, and many Dalits are not included in the electoral rolls or are otherwise denied the right to vote. Public service posts reserved for scheduled castes and scheduled tribes are almost exclusively filled at the lowest category (e.g. sweepers). Scheduled castes and scheduled and other tribes are also underrepresented in the public service and at all levels of government.⁵⁸

52 CERD, CERD/C/IND/CO/19.

53 CERD, CERD/C/IND/CO/19.

54 CERD, CERD/C/IND/CO/19.

55 CERD, CERD/C/IND/CO/19.

56 CERD, CERD/C/IND/CO/19.

57 CEDAW, CEDAW/C/IND/4-5.

58 CERD, CERD/C/IND/CO/19.

Sex-based discrimination

Patriarchal attitudes and deep-rooted prejudices entrenched in the social, cultural, economic and political institutions and structures of Indian society continue to facilitate discrimination against women, and on the basis of caste, ethnicity, race and religion. Harmful practices such as child marriage, the dowry system, “honour killings”, sex-selective abortion, sati, the dedication of women as devadasis, *sumangali*, and accusing women of witchcraft continue, as do caste-based child and female prostitution and manual scavenging, despite laws banning such practices. India has not taken sufficient sustained and systematic action to modify or eliminate harmful stereotypes and practices. In fact efforts to construct millions of new toilets under the Swachh Bharat Mission resulted in an escalation of manual scavenging as many of the new toilets still needed periodic emptying and offsite treatment of faecal matter (World Health Organization 2019). The government has also failed to protect Dalits who convert to Islam or Christianity in an effort to escape caste-based discrimination; they continue to lose their entitlement to affirmative action programmes upon conversion despite the persistence of discrimination after conversion.⁵⁹

Women’s participation in the labour force is low and has been declining in recent years. The gender wage gap is extreme, as women only earn 50–75 per cent of the wages earned by men.⁶⁰ Government efforts to prohibit and address trafficking (most of which occurs among Dalit and tribal women) have taken the route of raid-and-rescue operations, which persecute women and sometimes forcibly confine them in shelters and homes.⁶¹

2.3.5 Examples of labour market discrimination

Discrimination by sex in India

Agriculture and/or services remain the most important sectors for women’s employment in developing economies. In rural India, 73 per cent of female workers (and 55 per cent of male

workers) depend on agriculture (Agarwal 2021). Of the 101.8 million women in rural areas and 27.3 million in urban areas in the workforce⁶² in 2011–12, 62.3 per cent of women were employed in the agricultural sector; only about 20 per cent were employed in the secondary sector and 18 per cent in the services. In the secondary sector, there has been an increase in the proportion of women in construction (from 1.8 per cent in 2004 to 6 per cent in 2011–12) (Neetha 2018).

Women’s disadvantaged position and economic disparity in the labour market are evident through trends in data indicating the concentration of working women in the agriculture sector, where a majority are wage labourers, receive lower wages, face large-scale informal employment, and have poor literacy levels, and most self-employed women are engaged as unpaid workers (Sundari 2020). Moreover, there are social restrictions – ploughing fields, for instance, is not permitted for women – which in turn further limit women’s roles, agency and economic empowerment by compelling them to be dependent on male relatives for critical tasks in order to carry out agricultural work in rural India.

In addition, female labour force participation has witnessed a sharp decline from 37 per cent in 2005 to 26 per cent in 2018 – a trend that was observed to be acute in the context of a declining rate over the decades. This decline is sharper in rural areas as compared with urban areas, where larger numbers of women are employed in India. In addition to paid work, women workers also bear the burden of unpaid work within their own households. Women spend up to 352 minutes per day on domestic work – 577 per cent more than men (52 minutes) in India.⁶³ This limits the time available to them for paid work and is a significant contributing factor to their low workforce participation rates in India.

When employed for the same tasks being carried out by male workers, women are routinely paid lower wages, across sectors and skill levels. India dropped four places, from 2018, to take the 112th rank among 153 countries in the World Economic Forum’s Global Gender Gap Index 2019–2020.

59 CERD, CERD/C/IND/CO/19.

60 CEDAW, CEDAW/C/IND/4-5.

61 CEDAW, CEDAW/C/IND/4-5.

62 This figure is based on the usual principal and subsidiary status (UPSS) definition used in the NSSO 64th Round 2011–12.

63 Organisation for Economic Cooperation and Development (OECD).

The gender wage gap is 34 per cent (ILO 2018, 17). In terms of available paid work opportunities, women workers in India find employment in specific “feminized” sectors with poor working conditions; mostly concentrated in the lower levels with low wages in agriculture, the construction sector, tea plantations and to a limited extent in the manufacturing sector, including in garment industries in the export hubs of India. Available research shows how women workers are involved in piece-rate work on the factory premises and as home-based workers (Roy Chowdhury 2018), and traditional gender hierarchies are reproduced on the shop floor to facilitate labour disciplining; ethnographic evidence points to employer preferences of women for specific tasks in the assembly line (e.g., as machine operators or the Sumangali “scheme”) or as “cheaper” workers since they are largely perceived as secondary earners (Mezzadri 2018).

The high proportion of women (in comparison to men) in low-end care work (anganwadi workers, safai karmacharis, domestic workers, nurses, etc.) versus highly skilled care workers (e.g. doctors) is also symptomatic of an essentialization of women’s capabilities and skills when they do participate in paid work. There is ethnographic evidence of employer practices and preferences⁶⁴ that sustain the demand for women workers in these sectors. While sub-regional sector-specific data on women workers in India is limited, some indicative data points to large numbers employed in specific women-dominated sectors. For example, there were 14.29 million women home-based workers in 2004–05, which increased to 16.05 million in 2010–11. They comprise over 40 per cent of all home-based workers (37.45 million) in India (Raveendran, Sudarshan and Vanek 2013, 4). There are 3.3 million female frontline health workers in India.

The non-recognition of women’s work, especially domestic work and sex work, in the law leads to their further invisibilization from datasets and policy discussions. While some recognition at the state level in the form of the notification of minimum wages, welfare board schemes and other sector-specific social security benefits has been received due to the organizing efforts of trade unions and membership-based

organizations, central laws to regulate employers and guarantee basic workers’ rights to women in these sectors have been absent despite a long-standing demand for them.

Discrimination through exclusion from formal sector jobs

Labour in India is overwhelmingly informal. In 2018, India had 461 million workers, with 91 per cent in informal work: 80 per cent worked “in the informal sector, such as in agricultural work and in micro, small, and medium enterprises (MSMEs) with not more than ten workers. That is a staggering 369 million workers. The remaining 92 million workers are designated as being in the formal sector, but 49 million of them are employed as informal workers and described variously as contract labour and temporary staff, among others.” That is, 53 per cent of workers in the formal sector were also informal (Kannan 2020). Moreover, 52 per cent of all workers – especially those concentrated in agriculture – are self-employed. According to development economist Professor Kannan, the Ministry of Labour and Employment in its January 2019 report submitted by a committee constituted by the government admitted that “Two thirds of all informal workers (or 60 per cent of all Indian workers), totalling 278 million workers, do not even get the 375 rupee daily wage (or earnings in the case of self-employed individuals) that is considered the national minimum wage necessary to meet their household basic needs at 2017–18 prices. A majority of workers who contribute to the making of the national income belong to the category of the working poor.” (Kannan 2020) According to the ILO India Wage Report, the wage gap between “casual workers” (a category comparable to informal workers) and “regular workers” (i.e., comparable to formal workers) is 64 per cent (ILO 2018, 17). Informal workers are cheaper, more docile, less organized, and work harder and longer hours than formal workers. Seasonal migrant labour, many of whom are also Adivasis and Dalits, are overwhelmingly informal workers and embody these characteristics even more than local workers.

Regular workers are paid at least the official minimum wage and most often more. They have job security, and tend to have the right to sick

64 See Sen and Sengupta 2016 for domestic work, and Ray 2019 for women employed in hospital-based care provisioning.

pay, pensions rights and the right to organize. Informal workers have none of these rights and informal seasonal migrant workers are treated worse than the rest. For example, in the automotive sector south of New Delhi, they are paid three to four times less than permanent workers, always hired for less than a year, marked out by their differently coloured uniforms and forced to use different canteens from the permanent workers; sometimes they also have to use separate entrances – in short, they are treated as second-class workers (Barnes et al 2015).

Discrimination against scheduled tribes and castes in different occupational sectors

The predominance of Adivasis and Dalits in bottom-end poorly paid jobs can be seen from the following recent data:

In 2017–18, the average wage incomes of STs, SCs, Muslims, and OBCs, respectively, were only 48, 57, 66 and 67 per cent of the average wage income of general caste people.⁶⁵ The economic discrimination against SCs and STs and also against OBCs is generally well established. See Thorat and Newman (2007; 2010) and Deshpande (2011) for overviews. Deshpande and Ramachandran (2016) conclude, through a statistical analysis of National Sample Survey Office (NSSO) data up until 2012, that labour market discrimination and wage differentials based on caste persist. Recent econometric analyses such as the one by Srivastava confirm that wage discrimination, i.e. “unequal pay within a given occupation, given one’s education and skills level” exists both in relation to caste/tribe and gender (Srivastava 2019, 156).

Adivasis, Dalits and Muslims are discriminated against in relation to access to education; they also have a lower educational premium when it comes to jobs they can access (Shah et al. 2018) and regarding wages within broad occupational categories such as “educated regular workers” (Kannan 2018b: 9), primarily because even within these groups they are pushed into jobs that are considered most lowly.

Seasonal migrant workers include men and women from all castes, but it is those at the bottom of the social hierarchy (Dalits and Adivasis especially) who are often found doing the hardest work and facing the worst living conditions (Shah et al. 2018). There is also a strong geopolitical dimension to patterns of labour migration based on the class politics of the vastly uneven development that has taken place across the country (Shah and Lerche 2020). The migrant workers who are the worst off often come from some of the poorest parts of the country, with the lowest Human Development Indices (HDI) and the worst multidimensional poverty, particularly from Jharkhand, Bihar, Chhattisgarh, Madhya Pradesh, Odisha and eastern Uttar Pradesh. These are typically places where most wealth has been extracted by dominant castes and classes for centuries, leaving little for most of its other inhabitants. In their cross-nation field-research, Shah and Lerche (2020) found that in the three field sites in states that had a “high” HDI – Kerala, Tamil Nadu and Himachal Pradesh – the cheapest and most exploited workforce was lower-caste seasonal migrant labour from the central and eastern Indian forested belts, doing work that even local Adivasis and Dalits in areas they migrated to would not touch or were moving away from. There is no census-based enumeration of seasonal migrant labourers in India with proper coverage, but the most commonly accepted estimate is 100 million out of a labour force of 473 million, as suggested by Deshingkar and Akter in 2009.⁶⁶ All caste groups migrate but Adivasis and Dalits are overwhelmingly represented among circular migrant workers (see also Breman 1996; Mosse et al. 2000; Rogaly et al. 2002), especially in less skilled manual labour jobs. While Dalits and Adivasis constitute 25 per cent of the population, estimates based on the very incomplete NSSO 2007–08 survey data of seasonal migrant labour (that only counted 15.2 million seasonal labour migrants, of which 13.9 million were rural outmigrants) suggests they constitute more than two fifths of all seasonal

65 General caste: This is the category “other”, i.e. all groups except OBCs, SCs, STs and Muslims (Kannan 2019); Within the group ‘casual workers’, a group that corresponds in broad terms to informal workers, the wages of SC and ST workers were also lower than those of general caste people. In 2012, their average wages were only 95 per cent and 77 per cent, respectively, of the wages paid to general caste people in these occupations (Kannan 2018b: 11).

66 Economic upheavals in 2016–2017 (due to demonetization and a reform of the general sales tax or GST) led to a dent in numbers but it is not known how much or how long-lasting this was/is.

migrants and nearly 60 per cent of all female seasonal migrants (Srivastava 2019, 158).

They dominate numerically too among migrant workers in the low-skilled, back-breaking brick kiln sector, and more than a third of migrant construction workers who also face harsh conditions are Dalits and Adivasis (Ministry of Housing and Urban Poverty Alleviation 2017, 14–15). The brick kiln sector is estimated to employ 23 million people (Anti-Slavery International 2017, 2), and the construction sector employed 50 million people in 2012, as per NSSO data. These sectors have grown extremely rapidly as they have fed the construction boom of the rapidly growing neoliberal India since the early 1990s: the extreme urban growth in middle class housing, commercial property and Special Economic Zones (SEZs) and mega infrastructure projects. At the beginning of the neoliberal period, in 1993, construction only employed 3 per cent of the workforce; this grew to 11 per cent by 2012 (Institute for Human Development 2014, 209). The brick kiln workforce has also grown and stood at 5 per cent of the workforce around the same time (2012). Seasonal labour bondage is common in parts of the sector (Anti-Slavery International 2017, Committee of Concerned Citizens constituted by Jagrut Kashtakari Sanghatana 2018). By now, the construction sector is the country's second largest employer – only after agriculture, where Dalit and Adivasi migrant labour are again overrepresented.

The proportion of all Dalit and Adivasi seasonal migrants that work in manufacturing is about the same as the proportion of OBC seasonal migrants working in this sector (27, 21 and 28 per cent respectively) (Ministry of Housing and Urban Poverty Alleviation 2017, 17) – this means that the actual number of OBCs is larger, since the OBC group is numerically larger. This is based on 2007–08 data for male labour migration; the data only covers a fraction of all seasonal migrants but is the best data available.

Discrimination in the construction sector

Daily wage labourers in the construction sector and the brick kiln sector have special rights to social security and other benefits, due to special

legislation. For example, the local construction workers in Tamil Nadu have succeeded in availing themselves of the rights to provident funds and social security – but seasonal migrant construction workers in Tamil Nadu and elsewhere in India are unable to access this. The same scheme has been extended to brick kiln workers, who also have next to no access to it. Brick kiln workers across India are all informal seasonal workers – nearly all migrants. They all work extremely long hours under back-breaking conditions, while living in primitive conditions in the kiln area. Harassment, non-payment and underpayment of wages are common, and in many parts of the country debt bondage to the labour contractor or employer is common.

Jain and Sharma (2019) documented the following conversation with construction workers in Ahmedabad: “A labour contractor stated that Adivasi migrant workers are the best employees – ‘they don’t know anyone, they don’t negotiate and they have nowhere to go.’” The work wears out the labourers: “after 10 years of hard manual work, Jeevan falls sick quite often. He says that after 6 months his body stops working when work is too intense. He has to go home and rest for 4–5 days before he can resume his work with difficulty.” A local construction engineer says, “These people (Adivasis) are second-class labourers.” According to Jain and Sharma, Adivasis primarily occupy the lowest level jobs, as helpers (Jain and Sharma 2019, 74) and therefore earn less than OBCs and General Caste (69 per cent and 81 per cent respectively) (Jain and Sharma 2019, 75).

Discrimination in domestic work

According to the Shramshakti Report (Bhatt et al. 1988), out of 23 lakh domestic workers in India, 16.8 lakh were female. As per the NSSO estimates in 2004–05, the total number of workers employed in private households is 4.75 million,⁶⁷ a large number of which could be counted as domestic workers. Of these, 3.05 million were women workers in urban areas, marking an increase of 222 percent from 1999–2000 (Chandrashekhar and Ghosh 2007) and making the sector the most prominent in

67 The category “private household with employed persons”, which is popularly used to estimate the number of domestic workers, includes five sub-categories such as: housemaid/servant; cook; gardener; gate-keeper/chovkidar/watchman; governess/babysitter, and others. Of these categories, gardeners and gate-keepers/chovkidars/watchmen are highly male-centred and hence need to be separated from the rest of the categories to obtain an accurate picture of the feminization process in the sector.

female employment in urban areas. A breakdown of sub-categories shows that the category of housemaid/servant shows a high degree of feminization, with 87.4 per cent of the workers in this category being females. The number of domestic workers in urban areas increased by 68 per cent between 1999 and 2009 (Jain and Mishra 2018). NSSO estimates are however, considered a severe underestimation, with the actual numbers expected to be between 20 million to 80 million workers (ILO n.d.).

Some studies have highlighted the vulnerable conditions associated with domestic workers, who invariably belong to the poorer and more uneducated sections of society. These studies also note that women from marginalized castes form a substantive group of domestic workers (Raghuram 2001; Kaur 2006; Neetha 2004 and 2008). Other studies also point towards the fact that a large number of live-in domestic workers are overwhelmingly female migrants and from rural and Adivasi areas within the country (see for example, Wadhawan 2013). There is no official data on the number or proportion of SC/ST workers, but a study from 2009 states that “young, largely Christian women from tribal pockets dominate the sector for live-in workers, especially in urban centres” (Neetha 2009, 496). The same study states that SCs are dominant within the part-time live-out category and that a study showed that in 2003, they made up 77 per cent of this group in Delhi, while a study from 2008 showed this number had fallen to 40 per cent but still remained the largest single group (Neetha 2009, 496).

Discrimination in tea plantations

Qualitative evidence of discrimination against seasonal migrant Adivasi and Dalit workers in India is also available from the tea plantations in Kerala. Raj (2018; 2019) shows that original Dalit tea plantation workers from Tamil Nadu had won some labour rights over time (including some security of employment, and welfare benefits such as free health care and promise of pensions). However, with the global collapse of the tea economy in the 1990s, alongside economic liberalization, cut-backs in jobs and labour rights followed. Still, some Dalit women maintained “permanent” tea-plucker jobs but with severe welfare cuts; and others were reduced to “temporary” work status. As they fought for their rights (including 12,000 Dalit women workers going on strike for a month in

2016), the plantation owners seized the moment to introduce a new, cheaper workforce. These were mainly Adivasi, Dalit and Muslim migrant labour from central and eastern India, brought in as casual workers for just eight to nine months a year. They worked harder for less pay than even local low-caste labour. They were employed only as casual workers – never to be promoted to “temporary” status, let alone to the “permanent” status that some Dalit workers had. Being hired as contract labour meant no provident fund, no annual leave and no medical leave – all of which was provided to “permanent” and “temporary” workers” (see also Shah and Lerche 2020).

Discrimination in the chemical pharmaceutical industry

Qualitative evidence from Tamil Nadu shows similar patterns of discrimination. Economic liberalization had, from the 1980s, turned the coastal belt of Cuddalore District from a landlord-dominated agricultural belt into one developing chemical and pharmaceutical industries. An export-oriented gelatine factory emerged (with a Japanese business partner and joint ventures in China and Taiwan) and was locally dubbed “the bone factory”, because it made gelling agents used in food, pharmaceuticals, photography and cosmetics, from cow bones. Dalit men from the surrounding villages were hired as daily contract wage workers for the toxic (and polluting) cleaning of bones. They were controlled by the erstwhile landlords, whose relatives owned the factories, got the permanent jobs, and who dominated the supply of labour and material to the factories. But, as in the Kerala tea plantations, when the Dalits protested their exploitation, their bargaining power was crushed by the employers, who brought in cheaper seasonal migrant Adivasi and Dalit labour from Eastern India (Odisha, Bihar and Jharkhand) for eight to ten months of the year. While local Dalit contract labourers in the bone factory worked one eight-hour shift, six days a week, the eastern Indian migrants worked between one and four shifts in a row, seven days a week, taking turns to sleep in factory corners (Shah and Lerche 2020, 723 – drawing on Donegan 2018).

Discrimination in the textile and garment sector

Informality and social hierarchies permeate the shopfloor of garment production units in India, which result in lower wages and poorer working and living conditions, across production clusters

in North and South India. Adivasis and minorities find employment in this sector but appear to be concentrated in lower-paying, labour-intensive jobs. Migrant workers from poorer regions belonging to these communities are paid less than local workers and report working longer. For instance, adivasi migrants work in the Gujarat textile industry but only in the low-end part of the sector, as other parts are dominated by other mainly general caste and OBC seasonal migrants. They work mainly in sari cutting units. According to Jain and Sharma, even amongst migrant workers from Rajasthan in the textile industry, their wages are 25 per cent less than those of OBC workers and even less compared to other groups (Jain and Sharma 2019, 85). Migrant workers are, in fact, hired in the first place to meet the industry need for a highly flexible workforce, which can be exploited and retrenched based on seasonal patterns (Mezzadri 2017). Muslim workers have similar woes despite being “over-represented” in the garment workforce in the National Capital Region (NCR), in both factory and non-factory realms (Unni and Scaria 2009, Mezzadri and Srivastava 2015).

Despite employing a significant number of women in production hubs in the south, poor working conditions coupled with lower wages for migrant workers have been reported in various research studies focusing on the Bengaluru production cluster. Women workers report job loss due to pregnancy and attempts to unionize or demand for better wages (Roy Chowdhury 2018).

In recent years, sexual harassment and violence against workers within factory premises have increasingly been reported in the media and by trade unions. Production targets determine intensity and duration of work. In the textile and garment hub Tiruppur in south India, Dalits mainly find work in dirty dyeing units while skilled tailors in the garment units are overwhelmingly non-Dalits (Carswell and Heyer 2017) (ILO 2017c). The Sumangali system in Tamil Nadu’s textile industry has been reported to target and exploit women (ILO, 2018b), who are burdened by patriarchal social norms such as marriage in a culture where, customarily, the women’s side is expected to bear all or the larger share of wedding expenses. In a bid to earn

money for such expenses, women workers often have to put up with very poor accommodation, where their mobility is restricted under the pretext of protection. Several Adivasi migrant workers and migrants – especially women – from minority communities in Odisha, Chhattisgarh, Jharkhand, Bihar and West Bengal find employment in this sector, despite harsh working conditions, high production targets and such awful living arrangements.

Discrimination in white-collar jobs

Discrimination in recruitment for top white-collar jobs in India is well documented; see examples described by Deshpande (2011) and Thorat and Newman (2010). Thorat and Newman showed that for white-collar jobs requiring written applications, applicants were significantly discriminated against, purely on the basis of their caste and religion-specific names. The odds of a Dalit applicant getting a callback were two-thirds that of a high-caste Hindu with the same qualifications, and the odds of a Muslim were one-third of a high-caste Hindu.

2.4 Jordan

2.4.1 National law and policy

Jordan is party to the CEDAW and has ratified Convention Nos 100 and 111. The Jordanian Labour Code states that the provisions of the law apply to all workers regardless of sex, nationality, race, colour and religion and that any other rights and privileges specified in the law apply to all workers without discrimination.⁶⁸ Workers are defined as “any person, male or female, who performs work in return for wages or who is attached to an employer and under his order, including young persons, and persons who are under probation or training”. The Constitution guarantees all Jordanians the right to work and equality before the law without discrimination based on race, language and religion.⁶⁹ There are no provisions in domestic legislation prohibiting direct and indirect discrimination or discrimination in all aspects of employment and occupation, nor does the law contain protections for men and women (or other groups) to ensure equal remuneration for work of equal value. The Social Security Law (2014) applies to all

68 Labour Code, Section 2.

69 Jordanian Constitution, Sections 6 and 23.

workers without any discrimination in relation to nationality, and regardless of the duration or form of contract or the nature and amount of wage, provided they work in a sector which applies the standard minimum wage. Domestic workers are not given the minimum wage, and employers typically fail to enroll domestic workers even if their wages meet or exceed the minimum wage. There also remain some differences in entitlements available to women and men.

Workers outside the scope of the Labour Code, including domestic workers, cooks, gardeners and agricultural workers (most of whom tend to be women and/or migrant workers), are excluded from the provisions related to freedom of association and the right to organize into trade unions. In 2009, Jordan did issue regulations for domestic work, but the rights of these workers are still not commensurate with the rights of other workers under the Labour Code. Private recruitment and placement agencies involved in hiring non-Jordanian domestic workers have also been regulated to prevent abusive practices and exploitation of workers. Jordan has restricted the occupations and sectors open to migrant workers, refugees and workers of Palestinian origin. The Labour Code further restricts the right to form unions to citizens, hindering the ability of migrant workers to organize and collectively represent their rights and interests.⁷⁰

The Ministry of Labour, in the form of the Vocational Training Corporation (VTC), has adopted a policy promoting the participation of women in job-related vocational training programmes through its institutes throughout the country. Nonetheless, Jordan continues to restrict the occupations and activities women can be employed in. Article 69 of the Labour Code prohibits women from working in mines, between the hours of 8 pm and 6 am (except in certain places), and in other industries and economic activities specified by the Minister of Labour.

2.4.2 Jurisprudence

It remains unclear whether provisions of the Labour Code not covered by the Domestic Workers Regulation should be applied to cases

concerning domestic workers. Judgments have differed, and even judges themselves have noted the irregularities in judicial decisions on this point. A civil court judge explained, “I took up some cases in which I asked for social security coverage for the domestic worker but the appeal court rejected it, arguing that it was not specifically mentioned into (sic) the labour code” (ILO 2017b).

A magistrates’ court in Amman issued a ruling in 2014 that convicted Jordanian authorities of arbitrarily detaining an Egyptian worker (Wansa 2014). The worker, who had been living and working in Jordan since 2004, was detained for a year and four months following a dispute with his employer and work sponsor. The dispute led to the cancellation of the worker’s work permit, but his employer did not inform him of this as per sponsorship requirements. The Amman governor subsequently issued a decision to deport him back to Egypt and to keep him in detention until his case was settled and the deportation order had been carried out. In condemning the abuse of administrative detention by Jordanian authorities, the decision indicated the judiciary’s ability to protect the vulnerable groups in society.

2.4.3 CEACR comments

National law and policy

The CEACR has repeatedly requested the government to explicitly define and prohibit direct and indirect discrimination based on at least all the grounds in the Convention, in all areas of employment and occupation, covering all workers, and to take measures to prohibit and prevent sexual harassment (quid pro quo and hostile environment) in employment and occupation.⁷¹ The CEACR has noted with concern that the government has persistently failed to provide information on measures to promote equality of opportunity and treatment in employment and occupation and address de facto inequalities based on grounds covered by the Convention, other than sex.⁷²

Sex-based discrimination

Over the past ten years, the CEACR’s observations in Jordan have largely focused on

⁷⁰ Labour Code, Section 98. Migrant workers are however permitted to join established unions.

⁷¹ Observation (CEACR) – adopted 2020, published 109th ILC session (2021).

⁷² CEACR Observation (Adopted 2011), Discrimination (Employment and Occupation) Convention, 1958 (No. 111) – Jordan.

sex-based discrimination. It has also noted with concern the harsh conditions and high risk of physical and sexual abuse faced by many women and girls engaged as domestic workers.

The CEACR noted the recent legal review on pay equity conducted by the National Steering Committee for Pay Equity (NSCPE), with ILO support, and has requested the government to provide information on steps taken to implement the recommendations.

The CEACR has repeatedly pointed out the persistent occupational segregation of women in the civil service, women's underrepresentation, and that the criteria for seniority and promotion should not lead to indirect discrimination against women. The Committee has urged the government to take steps to address sex-based occupational segregation and to address the issue of women having an insufficient number of accumulated years of experience and knowledge, but the government has been unresponsive and only provided information on the Civil Service Regulations, which require equal opportunities for men and women, without indicating any steps taken by the government to address segregation and promote the rights of women.

The Committee has noted that various measures have been adopted to promote the employment of women and that women were mainly employed in the textiles and education sectors. The Committee also noted that young women face high barriers while entering the labour market, as labour market-related social norms limit their employment options to a small number of professions. The Committee also raised concerns around women's access to a wider range of jobs, including through participation in different training programmes. However, the relevant strategic plans of the VTC and National Employment-Technical and Vocational Education and Training Strategy, with targets to promote women's participation, were made note of by the CEACR.

Special measures of protection

Over the years, the CEACR has been concerned about the legislative restrictions on women's employment. Despite concerns raised, the government has failed, in its review of the Labour Code, to amend section 69 of the Labour Code and the corresponding Ordinance No. 6828

of December 2010. The CEACR has repeatedly requested that any restrictions be justified based on current scientific evidence, not stereotypes or gender biases.

Migrant workers

In several direct requests to Jordan, the CEACR has raised concerns about the dependency and vulnerability of migrant workers, and discrimination against migrant workers in the terms and conditions of employment, in particular the minimum wage, which may constitute discrimination on the basis of race or colour.⁷³ It has noted that the decision of the Council of Ministry of 8 February 2017 set the minimum wage for Jordanian workers at 220 Jordanian Dinars (JD), while the minimum wage for migrant workers in non-garment sectors was set at 150 JD by a decision in 2012. It has re-emphasized the principle of equal remuneration for work of equal value and that this should be part of a national policy on equality of opportunity and treatment in employment and occupation (which should be adopted) under the Convention. The Committee has welcomed the collective agreement between the Jordan Garments, Accessories and Textile Exporters' Association (JGATE), the Association of Owners of Factories, Workshops and Garments (AOFWG), and the General Trade Union of Workers in Textile, Garment and Clothing Industries, which established an equal minimum wage for migrant workers, with an in-kind component going towards accommodation and board.

The CEACR has also repeatedly raised the issue of the *kafala* or sponsorship system, noting that the system places migrant workers in a particularly vulnerable position and provides employers with the opportunity to exert disproportionate power over them, which could result in discrimination based on the grounds under the Convention, including race, colour, national extraction and sex-based discrimination.

Workers with family responsibilities

The CEACR has repeatedly raised concerns around the provisions in the Labour Code regarding unpaid leave of up to one year given to women to raise their children and childcare facilities for children under four years of age in enterprises with at least 20 women workers.

73 Direct Request (CEACR) – adopted 2020, published 109th ILC session (2021).

These provisions seem to reflect the needs of women who continue to bear an unequal burden of family responsibilities and reinforce social attitudes that hinder the realization of gender equality. The CEACR has reiterated the importance of moving towards arrangements and entitlements aimed at reconciling work and family responsibilities for both women and men on an equal footing. The CEACR made note of a legal review conducted by the National Steering Committee for Pay Equity (NSCPE), which proposed amendments to these provisions, requesting the government to consider amending sections 67 and 72 of the Labour Code to be in line with the Convention. In 2020, the Jordanian government endorsed Regulation No. 93 on Social Protection for Maternity, which aims to empower and retain working mothers in the labour force. The regulation, issued under the Social Security Law No. 1 of 2014, provides working mothers with cash benefits, to enable them to return to work while securing childcare for their children either at a childcare facility or at home. It also allows for registered childcare centres to receive direct cash benefits to cover operational costs. Under article 70 of the Labour Code, women workers are “entitled to maternity leave with full pay for ten weeks including rest before and after delivery”. Leave following delivery must account for a minimum of six weeks, with any work prohibited before the expiry of the six-week period. For a one-year period following delivery, female workers must be given the right to take off up to one hour per day, with pay, for the purpose of nursing. However, with respect to migrant workers, these rights are often unenforced in practice and migrant workers are often repatriated to their country of origin when they get pregnant (Nasri 2017).

The CEACR has reiterated the importance of non-discrimination and equality clauses in collective bargaining agreements, to ensure that all law enforcement officials are trained on non-discrimination and have adequate capacity

to investigate and respond to cases, as well as to collect disaggregated data and statistics, to inform ongoing policy and programmes measures to promote equality in the world of work.

2.4.4 Additional discrimination in law and practice

In practice, the Jordanian labour market remains highly stratified with discrimination against different groups embedded into it. Discrimination and barriers to employment, livelihoods and public services persist among Jordanians of Palestinian origin despite some progress over the past two decades.⁷⁴ Syrian refugees are also restricted to a limited range of sectors and occupations, which tend to be in the informal economy and where wages are low and working conditions are poor. They also remain excluded from most social services.⁷⁵ This is indicative of entrenched structural and societal racism against non-Jordanian citizens and refugees. Although Convention No. 111 does not protect against discrimination on the basis of citizenship or refugee status, it does require that non-Jordanians living and working in Jordan be protected against discrimination on the basis of race/ethnicity, sex, colour, religion, political opinion, social origin or national extraction in the world of work.

Migrant workers

The sponsorship system for foreign migrant workers continues to result in employers having excessive control over foreign migrant workers, rendering them vulnerable to trafficking, abuse and exploitative working conditions, with little recourse to justice.⁷⁶ There is widespread impunity for the crime of confiscating passports,⁷⁷ and workers sometimes forgo outstanding salary claims in order to get their passports back and return home (ILO 2017b).⁷⁸ Migrant workers are given a minimum wage lower than local workers. The CEACR held that this may constitute discrimination on the basis

74 CERD, CERD/C/JOR/18-20.

75 CERD, CERD/C/JOR/18-20.

76 CERD, CERD/C/JOR/18-20. See also ILO 2017, 12-13.

77 The withholding of passports is a crime under Jordan's passport law, which prescribes six months' to three years' imprisonment, as well as financial penalties.

78 Human Rights Watch reported that neither migrant workers nor Sri Lankan Embassy staff could cite a single case where courts sentenced an employer for passport confiscation (Human Rights Watch 2011).

of race or colour.⁷⁹ This difference in treatment also reinforces existing hierarchies and exposes migrant workers to other discriminatory practices and treatment at work. Migrant workers can only terminate their contract if both parties agree, if the duration of the contract has expired, or if the worker dies or is no longer able to perform the work. If a contract is terminated by the worker for another reason and it does not involve an allegation of “beating” or “degradation”, the employer may claim damages from the worker, which, in effect, prevents them from leaving (ILO 2017b).

As mentioned above, despite regulations prohibiting the practice, employers continue to withhold domestic workers’ passports, and domestic workers continue to require permission from their employers to leave their workplace – even when they are off-duty – and are entitled to a minimum of only eight hours of continuous rest at night. The resources that have been given to create effective monitoring mechanisms to detect cases of deception, exploitation and abuse of domestic workers are clearly insufficient. Nonetheless hundreds of complaints are still submitted each year to the Ministry of Labour, the joint trafficking inspection unit hotline and other assistive channels, such as NGOs and embassies of countries of origin (ILO 2017b). Complaints include unpaid and illegal deductions of wages, restrictions on freedom of movement, passport retention, threats and physical violence, and forced overtime.

Obstacles to access justice persist, including the fear of expulsion and insecurity of residence during legal proceedings. Some workers who have attempted to report abuse to the police have reportedly been returned to their employers, imprisoned or deported.⁸⁰ This weak monitoring, enforcement and regulation of domestic work enables the persistence of a hierarchical and racist culture and has led some workers to seek supplementary income through illegal and informal work, placing them at physical, mental and emotional risk.

Over the past few years, the space for civil society participation has narrowed, making it more difficult for NGOs to operate with independence. The government has also clamped down on the freedom of civil society to peacefully assemble and associate (Human Rights Watch 2011).

Sex-based discrimination

Generally, in Jordan, discrimination against women persists in the law and in practice, beyond the labour market and economy. Jordan’s Vision 2025 encourages women’s participation and entry into the labour market and aims to increase it from 15 per cent in 2014 to 27 per cent in 2025. Its National Employment Strategy of 2011–2020 also aims to reduce discrimination in the labour market by ensuring the provision of maternity insurance for women and return to work after maternity leave.⁸¹ However, strategies to address the low economic participation of women have always been undertaken in a traditional and partial manner and increased participation in the labour market has tended to be in the traditionally female-dominated sectors of health and education. Female unemployment also remains high, at 26.8 per cent in 2018.⁸² There has been little attempt to address underlying structural barriers or the complexity of the issue as a whole (Jordanian National Commission for Women 2019). No structural changes have taken place in the Jordanian family, and women continue to bear the burden within and outside the family. Necessary infrastructure, such as efficient transport and childcare, is also lacking (Jordanian National Commission for Women 2019). There is also a significant absence of women’s participation and representation in trade unions.⁸³ In recognition of the efforts of the National Committee on Pay Equity, Jordan was invited in 2018 to join the Equal Pay International Coalition (EPIC) launched in late 2017. Nonetheless, the pay gap is reportedly widening in favour of male workers (Social Security Corporation, Jordan 2017).

Barriers to women’s access to justice also persist,⁸⁴ and the Jordanian National Commission for Women continues to suffer from a limited

79 CEACR Direct Request (Adopted 2019), Discrimination (Employment and Occupation) Convention, 1958 (No. 111) – Jordan.

80 CEDAW, CEDAW/C/JOR/6.

81 National Employment Strategy 2011–2020.

82 Annual Report of the Department of Statistics for 2017.

83 CEDAW, CEDAW/C/JOR/CO/6.

84 CEDAW, CEDAW/C/JOR/CO/6.

status, insufficient decision-making authority, shortage of human, technical and financial resources, and inadequate presence at the governorate and local levels.⁸⁵ In a broader sense, gender-based violence against women remains prevalent but largely underreported and undocumented. The low prosecution and conviction rates and the lenient penalties imposed on perpetrators of gender-based violence contribute to a culture of impunity and hierarchy.

2.4.5 Examples of labour market discrimination

Discrimination by sex

The Jordanian labour law does not have an explicit provision which prohibits discrimination in employment and occupation, but has recently added an article that requires employers to abide by the principle of “Equal Pay for Work of Equal Value” – a step forward in the right direction, as women are mainly concentrated in lower-paid jobs. There are, however, some articles that require amendments or removals. Article 69 of the labour law ought to be abolished, as it restricts women from working in certain sectors/tasks and from finding employment during certain times of the night; article 69 too should be removed, to ensure that both genders are able to work in an environment free of all types of violence and harassment.

Wage-related discrepancies have also been documented in Jordan. In many instances, women are not being paid the minimum wage, they work overtime and during weekends, and are not enrolled under the social security umbrella.

Besides, domestic workers face discrimination based on their pregnancy status. Upon arrival in Jordan, domestic workers are asked to undergo a pregnancy test and are deported if found pregnant. In addition, if a domestic worker gets pregnant during her employment term, she has to face termination, dismissal and deportation. Besides, domestic workers do not have the legal right to maternity leave and/or protection. At the same time, abortion is illegal in Jordan. Domestic workers also face sexual and physical abuse,

including violence, which sometimes may lead to unwanted pregnancies.

Discrimination by migrant status

In a recent study on wage differences between migrant workers and nationals, looking at pre-COVID, 2019 age data for 49 countries, the ILO found that migrant workers in Jordan earned on average 29.5 per cent less per hour than national workers – making it one of the countries, among others covered in the report, with the highest migrant wage gaps (Amo-Agyei 2020).

In February 2020, the Tripartite Labour Committee decided to increase the minimum wage from 220 JDs (310 USD) to 260 JDs, (367 USD) except in the garment, domestic work and loading/unloading sectors. For migrant workers, wages increased to 230 JDs again with the exception of these sectors. Thus the migrant workers working in them are doubly discriminated against. The Committee ruled that the wage gap between migrant workers and Jordanian workers should be reduced within two years of the decision date (that is, by 50 per cent in 2022 and another 50 per cent in 2023). The decision became effective in June 2021. As of January 2022, the minimum wage of migrant workers was set at 245 JDs (346 USD). Again, garment, domestic work, and loading/unloading sectors were excluded.⁸⁶

Discrimination in domestic work

Minimum wages are set separately for Jordanians and migrant workers (non-Jordanians). At the same time, as mentioned before, domestic workers are excluded from the national minimum wage. Domestic workers' wages are set through bilateral discussions between the countries of origin and the Government of Jordan, so they vary as per nationality, thus reinforcing discrimination among workers based on country of origin. With the recent tripartite decision referred to above, most domestic workers are earning wages below the minimum set for Jordanians and migrant workers in other sectors.

Discrimination in the garment sector

In Jordan, not only are migrant workers excluded from the national minimum wage, but also from the minimum wage of Jordanian garment

⁸⁵ CEDAW, CEDAW/C/JOR/6.

⁸⁶ Garment workers (Jordanians and migrants) follow the sectoral collective bargaining agreement when it comes to the minimum wage (so they do not fall under this decision).

workers; instead they follow the sectoral collective bargaining agreement (CBA). There is some history behind this. In 2009, the legal national minimum wage was increased by 36 per cent to 150 JD. Workers in the garment sector were explicitly excluded from this increase, so for them the legal minimum wage remained at 110 JD.⁸⁷ It was explained that the wage gap was justified because of the in-kind contribution that employers provide to migrant workers, which covers lodging and accommodation.⁸⁸ However, no assessments were conducted on the value of these in-kind payments to ensure that they would be “fair and reasonable”. As per the 2019 CBA, the minimum wage for garment workers is set at 220 JD, which was then the national minimum wage. Migrant workers’ cash remuneration stood at 125 JD, since 95 JD was deducted towards food and accommodation as in-kind payment. Besides, workers contributed 7.5 per cent of their basic wage as their social security contribution and paid 0.5 JD as a membership fee to the garment union on a monthly basis, which was automatically deducted from their wages by employers and deposited in the union’s account. This made migrant garment workers the lowest-paid formal cash wage earners in the country. Here it is important to note that in spite of migrant workers’ regular and major contribution to the union, they are not allowed to elect their own representatives and cannot hold any union positions.⁸⁹

During the lockdown declared by government in March 2020 in order to respond to the coronavirus pandemic, migrant workers in qualified industrial zones alone were asked to work during certain periods, although Jordanian workers were asked not to report to work before the lockdown was lifted. Since there was a full lockdown at the time and travel restrictions applied, migrant workers struggled to deal with health challenges, as they often resided in the rather isolated zones.

Before the pandemic, any government decision on holidays applied to both private and public sector employees, and to all workers uniformly. However, since then the government has excluded the private sector from its decisions to suspend work due to harsh weather conditions. Private sector enterprises in the manufacturing sector heavily rely on migrant workers, who do not enjoy the same fundamental principles and rights at work such as freedom of association and collective bargaining.

As in other migrant work sectors, migrant garment workers are also not allowed to exercise their sexual and social reproductive rights irrespective of their legal marriage status. It is mandatory for couples, even legally married, to stay in the dormitories provided by employers. The dormitories provided by employers are further gender segregated. Although the law does not discriminate between workers and employers to file complaints, in practice, migrant worker requests to file First Information Reports (FIRs) are denied by police authorities (ILO 2020c)

2.5 Kuwait

2.5.1 National law and policy

Kuwait is party to the CEDAW and has ratified Convention No. 111. The Kuwaiti Constitution provides for equal rights, without distinction on the basis of sex, origin, language and religion.⁹⁰ Its Criminal Code criminalizes sexual harassment in all its forms. The Private Sector Labour Law (2010) provides that women be paid the same as men for the same job (but not for work of equal value).⁹¹ It does not prohibit direct or indirect discrimination based on all of the grounds listed in Convention No. 111, nor does it define or prohibit sexual harassment. The Law, however, prohibits termination of employment on the basis of religion, gender or origin. Additionally, while the Law only mentions that Kuwaitis in the private sector have the right to establish a workers’ union, it does not explicitly prohibit

87 The exclusion of workers in the garment sector was first reported in [Better Work Jordan: First Compliance Synthesis Report \(2010\)](#). However, factory implementation of the 2009 minimum wages, which provided a higher total wage for Jordanian workers and a one-time seniority increment only for non-Jordanian workers, went into effect on 1 February 2012. The discriminatory nature of this decision was a central theme of the first CBA in 2013.

88 Several Better Work Jordan compliance reports have noted that conditions of dormitories are the reason behind most non-compliance. Accommodation and lodging have varied across the sector from good to poor depending on the means and good will of respective employers; however, these in-kind contributions have been a subject of contention and remain to be standardized.

89 See point 1 under Section 1.3.

90 Article 29.

91 Article 26.

non-Kuwaitis from joining such unions. Law No. 15 (1979), on the civil service, also fails to prohibit all forms of discrimination on the grounds mentioned under the Convention. Legislative Decree No. 19 (2012), which concerns national unity, prohibits advocacy or the incitement of hatred against any social group and the promotion of the idea of racial superiority.⁹² However, Kuwait does not have a national policy to address discrimination in employment and occupation.

In Kuwait, the provisions of ratified international treaties become the law of the land (domestic law) once the country has acceded to any treaty, and judges are obligated to apply these provisions directly.⁹³ According to judgments of the Court of Cassation, this would mean that the ILO Convention No. 111 should be directly applied in Kuwait.

In 2015, Kuwait issued a new standard contract for migrant workers, and a 2016 administrative decision allowed some migrant workers to transfer their sponsorship to a new employer after three years of work, without their employer's consent. However, these reforms exclude migrant domestic workers. Kuwait has a law prohibiting the trafficking of persons and the smuggling of migrants (No. 91, 2013), and has established a national strategy to combat the same.

The government has also adopted a Domestic Workers Act (Act No. 68 of 2015), which regulates the recruitment and placement of domestic workers and sets minimum conditions for their employment. It also prohibits employers from retaining domestic workers' personal identity documents⁹⁴ and from forcing domestic workers to perform dangerous or humiliating work.⁹⁵ It also requires employers to provide food, clothing, medicine and medical treatment, and suitable housing.⁹⁶ In 2016 and 2017, the Interior Ministry passed implementing regulations for the law and mandated that employers pay overtime compensation. The Ministry also issued a decree establishing a minimum wage

of 60 Kuwaiti Dinars (KD) (that is, USD 200) for domestic workers. These protections are weaker than those applied to workers under Kuwait's Labour Law; domestic workers are not entitled to establish unions, and enforcement mechanisms, including labour inspections, are absent. There is also an absence of sanctions against employers who confiscate passports or fail to fulfil a number of their responsibilities under the Law.

2.5.2 Jurisprudence

The Court of Cassation has, on more than once occasion, set judicial precedents affirming the authoritative nature of ratified international conventions at the national level. The Court has ruled that when Kuwait accedes to any international treaty, it signifies that its provisions will become part of the State's domestic law and judges are obligated to apply them directly.⁹⁷ This means Kuwaiti judges are fully empowered and in fact duty-bound to apply the provisions of ratified international treaties in the judgments they deliver, whenever such provisions are relevant to a case being heard.

Sex-based discrimination

A 2012 court decision cancelled a ministerial order that barred women from entry-level jobs at the Justice Ministry (Human Rights Watch 2010). The ruling came after a series of lawsuits were filed contending the constitutionality of a Justice Ministry job advertisement which was seeking applicants for entry-level legal researcher positions and specified that the positions were only open to male candidates. At least six recent female graduates of law schools had applied for the Justice Ministry jobs following the July 2011 advertisement, but ministry officials refused to accept their applications. The court ordered the ministry to cancel its requirement that the candidates be male and decided that the requirement violated the Kuwaiti Constitution and international treaties ratified by Kuwait. An earlier judgment of the Administrative Court in 2010 had rejected a claim that women should be able to apply for work in the public prosecution

92 Article 1.

93 Court of Cassation, Cassation Ruling No. 80 of 1997/commercial/session of 10/5/1998, Majallat al-Qada'wal-Qanun, year 26, No. 1, 291.

94 Articles 12 and 22(4).

95 Article 10.

96 Articles 9 and 11.

97 Cassation Ruling No. 80 of 1997/commercial/session of 10/5/1998, Majallat al-Qada'wal-Qanun, year 26, No. 1, p. 291.

unit, as the judge in that case had found that the Constitution, which cites Islam as the state religion and Islamic Sharia as “a main source of legislation”, prevents women from holding prosecutorial positions.

2.5.3 CEACR comments

National law and policy

The CEACR has repeatedly called for the government to prohibit direct and indirect discrimination based on at least all grounds under the Convention, with respect to all aspects of employment and occupation and covering all workers.⁹⁸ It has noted that general non-discrimination provisions in the Constitution are not adequate, that criminal proceedings as a response to sexual harassment are not normally sufficient and that the government needs to adopt specific legal provisions defining and prohibiting both quid pro quo and hostile environment sexual harassment in employment and occupations, adopting provisions to address remedies and sanctions. The Committee also said that although international treaties have the force of law once signed, ratified and published in the Official Gazette of Kuwait, as per the Constitution, Kuwait, nonetheless, should adopt national legislation to implement the principles laid down in the Convention. The provisions of the Convention, even where it prevails over national law, may not be sufficient in themselves to provide effective legal protection from discrimination to individual workers.

It was pointed out that a labour law review, foreseen in a technical cooperation project signed with the ILO in 2014, was not carried out. The CEACR has also repeatedly requested that Kuwait develop and implement a comprehensive national policy for the elimination of discrimination in employment and occupation on all grounds under the Convention.

Migrant workers

For years now, the CEACR has raised issues concerning Kuwait’s *kafala* sponsorship system for migrant workers. It has seen some improvements but continued to note with concern that the system denies workers the opportunity of obtaining alternative employment, exposes migrant workers to abuse

and undermines their ability to access means of redressal. The Committee noted that the Ministry of Social Affairs and Labour Decree No. 378/2016 allowed migrant workers (but not domestic workers) in the private sector to transfer their sponsorship to a new employer without the consent of their current employer after three years from the issuance date of their work permit, provided they give 90 days’ notice to their current employer. It also made note of the adoption of the Domestic Workers Act (2015), but said that this Act is still not at par with the general labour law, highlighting the following facts: that domestic workers are not allowed to change employers without the consent of their current employers; that protection against discrimination and abuse, including sexual harassment from employers, is weak (specific sanctions are foreseen against recruitment agencies violating the provisions of the law, but not in cases where it is the employer who is violating the law); and that the Ministry of Interior (unfairly) deports domestic workers considered as having “absconded” from their employers, even if they did so because of abuse from their employer. Additional legal gaps in the Act, including the lack of labour inspection mechanisms, weak penalties for abusive recruitment agencies, the absence of sanctions applied to employers for withholding the passports of domestic workers or failing to fulfil their responsibilities, the absence of a requirement for employers to be present during dispute resolution between employers and domestic workers, and the absence of complaint mechanisms were also noted with concern. The establishment of a joint stock company, for the recruitment and employment of domestic workers, and of the Kuwait Home Helper Operating Company to avoid the negative aspects of recruitment for domestic workers, and for the amicable resolution of complaints by the Domestic Workers Department within the Ministry of Interior have been taken stock of by the Committee.

The CEACR has observed the adoption of the Domestic Workers Act, but is concerned that it does not contain specific provisions on sexual harassment.

98 Direct Request (CEACR) – adopted 2018, published 108th ILC session (2019).

Stateless persons

In recent observations of the CEACR, it took up the issue of stateless persons or persons without nationality (*bidoons*). The Committee took note of the Government's statistics on "illegal residents", who numbered approximately 100,000 in 2014. It also recalled the 2012 Resolution of the Council of Ministers No. 1612, which adopted a road map to remedy this issue. It noted the efforts of the government (Central Agency), Chamber of Commerce and Industry, and the Union of Cooperative Societies to enable stateless persons to find employment in the public and private sectors, as well as self-employment. It also noted with concern that *bidoons* have lived in Kuwait for generations but are still deemed "illegal residents".

Special measures of protection

The CEACR has raised concerns over a number of years that the prohibitions on women working at night or in work considered hazardous, arduous or harmful to health, or which violates public morals in the Private Sector Labour Act (2010) (Articles 22 and 23), is discriminatory and based on stereotypical perceptions of women and their role in society.

Sex-based discrimination

The CEACR has raised concerns about the under-representation of women in employment in general and the absence of concrete policies aimed at addressing horizontal and vertical segregation in the labour market. It has also noted a further drop in economic participation and opportunities for women in 2017. The Committee has also raised concerns around the practical and legal obstacles to women's access to certain posts and occupations under the Government's control, such as judicial appointments, including due to stereotyped assumptions. It was noted, for instance, that a number of women had graduated from the Police Officer Institute and had joined the Public Fire Department.

2.5.4 Additional discrimination in law and in practice

Migrant workers

Two thirds of Kuwait's population is comprised of migrant workers, who remain vulnerable to abuse despite recent reforms. In addition to the persistence of the sponsorship system, migrant workers tend to fill the low-paid, low-skilled jobs which, combined, makes them particularly vulnerable to exploitation. Many migrant workers face employer negligence, wage theft and/or have to endure reckless risks in their daily employment, particularly those working in construction (Connell 2019). Those who are provided accommodation by their employers often live in overcrowded and often unsafe labour camps and have been particularly exposed to risks of COVID-19.⁹⁹ High-skilled employment is reserved for Kuwaitis or Arab migrants. Ensuring migrant workers are poorly paid and badly treated in employment not only ensures they remain in precarious labour positions, but also creates barriers to their social advancement. This discrimination is inherently instilled in Kuwaiti labour relations and creates a clear hierarchy that impacts all aspects of employment and life for migrant workers.¹⁰⁰

Article 12 of the 1979 Public Gatherings Law bars non-Kuwaitis from participating in public gatherings. This was put in place largely to prevent demonstrations by the *bidoon* community, a population of about 100,000 stateless persons whose predicament dates back to the foundation of the Kuwait,¹⁰¹ but also poses a legal barrier to migrant workers demonstrating legally.

Hate speech directed at foreign workers has also reportedly risen in recent years, including by the Prime Minister, who said, "we have a future challenge to address the demographic imbalance" (Ibrahim 2020). There are reports that some Members of Parliament (MPs) have also been asking the government to take every possible action to modify the demography of Kuwait by imposing financial pressures on migrant workers, such as by doubling health

99 ECDHR, "Kuwait: The Life of Overseas Migrant Workers".

100 ECDHR, "Kuwait: The Life of Overseas Migrant Workers".

101 CERD, CERD/C/KWT/21-24. Despite Biduns' continued presence in Kuwait over the decades, authorities claim that many Bidun are "illegal residents" who deliberately destroyed evidence of another nationality to receive benefits.

care and residency fees.¹⁰² Some MPs have also reportedly requested that fees for road use only apply to migrant workers, under the pretext of decreasing traffic jams, and draft bills have been prepared to increase the driving fees for migrants. In fact, migrant workers in Kuwait are subjected to deportation for committing traffic violations. Some 50 migrant workers were administratively deported between 2016 and 2017. In 2013, the government announced its intention to reduce the number of migrant workers by half. In 2020, Parliament passed the Demographic Imbalance Act, which requires the government to determine a ceiling for the total number of migrants in the country.

In 2019, Kuwait launched a “Be Assured” campaign with 124 billboards installed across the country to target marginalized lower-income migrant workers. The government-run campaign evicted unaccompanied male migrant workers, whom they referred to as “bachelors” from residential neighbourhoods. The government established a hotline for nationals to report these “bachelors” in residential areas and shut off water and electricity to force workers out of their accommodation. Evicted migrant workers were not provided alternative accommodations. This campaign took place within the context of migrant workers earning very little, with few options but to leave their families back in their home countries in order to live in shared dwellings (NA 2019b).

Migrant domestic workers

Reports of serious physical, verbal and sexual abuse by employers against domestic workers are still common. In 2015, the Department of Domestic Labour (established to receive and investigate complaints concerning violations by employers) received 2,487 complaints demanding the return of passports, despite this practice being prohibited under the Domestic Workers Act. Reports of non-payment of wages, excessively long working hours, sexual, physical and psychological abuse, denial of adequate food and health care, restrictions on the workers’ freedom of movement, and forced confinement in the workplace are also common. Employers

frequently misuse absconding reports to exert control over domestic workers, or to terminate employment without notice and have the worker deported (Human Rights Watch 2010). Employers also often file retaliatory criminal charges against domestic workers trying to secure their rights or threaten them with charges should they flee an abusive household. When disputes arise between migrant domestic workers and their employers, they are commonly deported through administrative decisions, without a reasoned court order or possibility of appeal.¹⁰³ There is no judicial review available for administrative deportations (Human Rights Watch 2010). Reports of deception, abuse and trafficking by recruitment agencies are also common; however, investigation and prosecution of recruitment agencies does not always take place (Kuwait Society for Human Rights 2017). This indicates that despite regulations, significant barriers to justice remain, and a culture of impunity for mistreatment and abuse of foreign domestic workers is prevalent.

The horrific 2019 rape and death of a Filipino woman who was working as a domestic worker and a high-profile rescue of another Filipino worker received widespread attention in Kuwait and in the international media. It ended with the Philippines banning migration for domestic work to Kuwait, which in effect removes all protections for Philippine domestic workers, who are now forced to resort to informal migration channels. In the Kuwaiti media, denigrating and accusatory headlines appeared suggesting the rescued maid was rescued for not being able to “eat eggs”. This is reportedly illustrative of local attitudes towards foreign domestic workers.¹⁰⁴

Sex-based discrimination

Kuwaiti law and practices continue to discriminate against women. Sunni husbands can prohibit their wives from working if it is deemed to negatively affect their family interests.¹⁰⁵ The rules that apply to Shia Muslims also discriminate against women. Provisions in the Personal Status Law also discriminate against women in relation to inheritance rights, the weight given to their testimonies in judicial proceedings, and their

102 CERD, CERD/C/KWT/21-24.

103 CERD, CERD/C/KWT/21-24.

104 ECDHR, “Kuwait | The Life of Overseas Migrant Workers”.

105 CEDAW, CEDAW/C/KWT/CO/5.

rights in contracting marriage, during marriage, and upon its dissolution.¹⁰⁶ The Penal Code reduces or eliminates punishments for violent crimes committed by men against women, and it criminalizes abortion even when it is necessary to save a woman's life.¹⁰⁷ Women have only in recent years been permitted to work as prosecutors and judges.¹⁰⁸ Laws and practices also discriminate against women in relation to the passing of nationality to their spouses and children, and effectively prevent women in some cases from living legally as a family with husbands and adult children who are not recognized as Kuwaiti nationals (Human Rights Watch 2000).

2.6 Lebanon

2.6.1 National law and policy

Lebanon is party to the CEDAW and has ratified Conventions Nos 100 and 111. Lebanon's Constitution provides for equality and non-discrimination among Lebanese citizens.¹⁰⁹ The Labour Code prohibits employers from discriminating between workers on the basis of gender with regard to the type of work, pay, employment, promotion, vocational training, and clothing.¹¹⁰ However, there are no penalties in the Code for failure to comply with these provisions. There are no other provisions guaranteeing equality or non-discrimination in the Labour Code or regulations governing employment and labour.

Women are entitled to ten weeks of maternity leave, which is to be paid by the employer, and it is unlawful to dismiss a woman due to her pregnancy. There are no entitlements for paternity leave. The Labour Code does not explicitly prohibit workplace sexual harassment, but the Penal Code includes a number of acts that amount to sexual harassment,¹¹¹ and in December 2020, the Government passed a law to criminalize sexual harassment.¹¹²

The Labour Code excludes domestic workers and agricultural workers – two sectors where the majority of workers are women and migrants.¹¹³ Both the Labour Code and the Social Security Law also provide welfare benefits to men that do not apply to women. Women are unable to extend coverage of their national social security to their spouses unless the husband is disabled or at least 60 years old, whereas men are entitled to extend their benefits to unemployed spouses.¹¹⁴ Article 27 of the Labour Law continues to prohibit the employment of women in a number of industries and occupations (listed in Annex 1 of the Labour Law).

Lebanon does not have a national equality or non-discrimination policy, nor does it have an employment or jobs policy. Lebanon, however, does have a national Strategic Plan for Women in Lebanon (2011–21), which aims to remove discriminatory labour law provisions, raise awareness on women's rights and opportunities in the world of work, and improve women's skills and participation in the labour force. Lebanon also has a National Social Development Strategy (2011), which aims to mainstream gender issues in all policies and programmes and a Small and Mid-Size Enterprise (SME) Strategy – a roadmap to 2020 which attempts to establish a more women-friendly business environment and increase women's ownership and leadership in SMEs.

2.6.2 Jurisprudence

For the most part, the Lebanese enforcement and judicial system have operated against the rights and interests of migrant domestic workers (ILO 2020). However, some lower court judgments have been issued in favour of migrant domestic workers and can serve as examples for future complainants:

106 CEDAW, CEDAW/C/KWT/CO/5.

107 Penal Code, Articles 29, 153 and 182.

108 The Ministry of Justice issued Decree 253 on 2 November 2014.

109 Preamble (C) and Article 7. Non-nationals are not covered by these constitutional clauses. This exclusion is important because of the significant presence of refugees and migrant workers.

110 Article 26.

111 See Penal Code, Articles 385, 507, 519 and 531.

112 Law No. 205 "Law to Criminalize Sexual Harassment and Rehabilitation of Its Victims", issued on 30 December 2020.

113 Article 7.

114 See Article 3 of the Labour Law and Article 46 of the Social Security Law.

False accusations. Most often judgments acquitting a domestic worker of a crime, sometimes based on the employer's own confession, did not result in any action taken against employers for lodging false accusations. Frequently, public prosecutors do not follow up in these cases. Some judgments have since been issued against employers for falsely accusing domestic workers of theft or other crimes. In one case in 2017, a public prosecutor charged the employer with filing a false accusation after it was found that the employer had fabricated claims against the worker.¹¹⁵

Breach of trust for non-payment of wages. In comparison to the relative ineffectiveness of labour arbitration councils in resolving the non-payment of wages cases, a court in 2013 convicted an employer of the crime of "breach of trust" under article 671 of the Penal Code for failure to pay a worker wages. The employer was sentenced to two months of imprisonment, and a fine of 500,000 Lebanese pounds was imposed. The court also ordered that the employer reimburse the plaintiff worker the US \$3,750 s/he was owed, in addition to 1,500,000 Lebanese pounds in damages (ILO 2020).

Passport withholding and freedom of movement. A summary affairs judge in Beirut issued two similar judgments ruling that employers' retention of domestic workers' passports is a breach of fundamental rights guaranteed by international treaties ratified by Lebanon and that deprivation of liberty cannot be used as a means to ensure that the services that the employer has paid for by recruiting a worker are delivered (ILO 2020).

Guaranteed access to justice. In 2016, a decision was made in favour of a worker who had breached certain conditions of their residency, but who retained the right to resort to the judiciary. It was ruled that the migrant worker retained their fundamental right to access a fair court hearing irrespective of violations allegedly committed.

Discrimination and forced labour. A series of judgments in 2014, 2016 and 2017 issued by a Beirut judge, Justice Maalouf, made it clear that claims for the "repossession" of domestic

workers reflected racial and gender-based discrimination practices reminiscent of slavery. He reiterated Article 1 of the Universal Declaration of Human Rights and ruled against employers' applications for "repossession" (ILO 2020).

Gender-based discrimination

In 2009, a court ruled that a Lebanese mother could pass on her Lebanese nationality to her children from her late Egyptian husband. This victory, however, was short-lived and the ruling was repealed by the Court of Cassation in 2010 (Lebanon Support 2020).

2.6.3 CEACR comments

Over the past two decades, the Committee has reiterated the same key concerns, which have centred on the lack of a legal framework prohibiting discrimination, as well as the rights of migrant domestic workers and the lack of legal protections in theory and in practice. Little progress has been noted over this period.¹¹⁶

National law and policy

For over 20 years, the CEACR has been requesting the government to introduce a definition and general prohibition of direct and indirect discrimination on the grounds set out in Convention No. 111, within the framework of the Labour Code reform, which is applicable to all workers in all aspects of employment and occupation. The Labour Code of 1946 currently only covers discrimination between men and women in certain aspects of employment (section 26) and fails to protect them against all forms of sexual harassment. The provision that workers can leave their jobs without notice if "the employer or his representative commits the offence of molestation of the worker" (section 75 (3)) is insufficient protection and redressal for sexual harassment.

Domestic workers

The CEACR has, for over 20 years, repeatedly raised concerns about the multiple forms of discrimination against foreign domestic workers and the lack of measures taken by the government to address the absence of legal

115 "Khutwa Qada'iyya Ula li-Idanat Mumarasat al-Iddi'a'at al-Kadhiba didda Khadimat al-Buyut" (A first judicial step to condemn the practice of false accusations against domestic workers), The Legal Agenda, 4 March 2012 (ILO 2020).

116 Direct Request (CEACR) – adopted 2019, published 109th ILC session (2021).

protection for domestic workers, given their exclusion from the scope of the Labour Code, rendering them particularly vulnerable to discrimination (including harassment) on the basis of sex and other grounds, such as race, colour and ethnic origin. It has also commented on the reported continual abuse and exploitation of migrant domestic workers in spite of measures taken by the government, foregrounding the fact that victims are often not able to seek assistance when they are forcibly confined to the residence of their employer or when their passports have been retained. The Committee observed that the coverage of domestic workers by the Code of Obligations and Contracts and the model contract and bill on the employment of domestic workers existed, and that the government indicated that it is working on measures to improve the law and measures of protection. The CEACR nonetheless raised concerns about provisions in the model contract, including the unfavorable terms and conditions set out in the contract, pointing out that termination of the contract would always result in the foreign domestic worker having to leave the country.

Special measures of protection

Over the years, the CEACR has repeatedly emphasized that the Labour Code (section 27) contains discriminatory restrictions on women's employment which go beyond maternity protection and had requested the government to reform the provisions to ensure adherence to the Convention.

Sex-based discrimination

The Committee has observed significant disparity between male and female representation in the civil services, particularly in higher-level positions. The CEACR has also noted with concern the substantial occupational segregation between men and women in the labour market and in training. It has also made note of the lack of measures to promote the concept of shared family responsibilities and to combat the difficulties that women face while having to shoulder the combined burden of work and family responsibilities. It further highlighted other concerns raised by the CEDAW, including women's limited access to the formal labour

market and the occupational segregation of a high percentage of women in low-paid jobs. The Committee has also proposed various frameworks for women's empowerment and the framework of the National Strategy for Women (2011–21), with the aims of eliminating the discriminatory provisions in labour laws, raising awareness on rights and opportunities, and developing women's skills to improve participation in economic activity.

Non-nationals

The Committee has noted that, for many years, the country has hosted an increasing number of refugees, among the largest relative to its national population: one in six inhabitants is a refugee. Nonetheless, it has observed the restrictions on employment faced by non-nationals. The Committee recalled that, while the Convention does not cover discrimination on the ground of nationality, it covers non-nationals on an equal footing with nationals, so non-nationals are (theoretically) protected by it against discrimination on the grounds of sex, race, colour, religion, political opinion, national extraction or social origin.

Enforcement

The Committee has raised concerns over the weak level of enforcement of non-discrimination provisions in the world of work and ability of workers to freely lodge complaints without fear of retaliation.

2.6.4 Additional discrimination in law and practice

Migrant workers

Lebanon's entire system for work migration creates a hierarchy and discriminates on the basis of nationality.¹¹⁷ This type of hierarchy is also apparent in labour relations in the country, where migrant workers and non-nationals experience discrimination in the law and in practice, on the basis of their ethnicity, race, colour and/or sex vis-à-vis other workers (Jaoude 2015). Migrant workers are not permitted to establish trade unions. They may only join unions so long as they have reached the age of 18, work in the profession, have not been convicted

117 See the report titled *The Labour Sector In Lebanon: Legal Frameworks, Challenges, And Opportunities* (Leaders for Sustainable Livelihoods [n.d.]). Different procedures and requirements apply depending on the nation the applicant is applying from.

of major offences and are entitled to work in Lebanon. In the unions, the migrant workers are not entitled to vote or be elected to the trade union council.¹¹⁸

Domestic work

Domestic workers are excluded from the protections of the Labour Code. This puts female domestic workers (most of whom are migrants or non-nationals) in situations of greater vulnerability to abuse and exploitation. Their precariousness is compounded by the *kafala* or sponsorship system; the fact is that they lose their legal status if their sponsor fails to renew their permits or terminates their contract, or if the worker decides to leave their employer after experiencing violence or abuse. Domestic workers may also be detained for leaving the home without the permission of their employer, or for violation of any of the terms of their contract. They are subjected to questioning and then deported if their answers are deemed unsatisfactory (UN Women et al. 2018). This system has led to a wide range of abuses – including non-payment of wages, forced confinement, violence and abuse and excessive working hours without breaks. Their exclusion from the labour law also restricts their ability to join unions, freely associate and engage in collective bargaining, or seek representation of their rights and interests and limit the possibility of labour inspection. The General Security prevents domestic workers (and other foreign workers) from changing sponsors without the approval of the relevant authorities; however, most workers do not know who those authorities are (UN Women et al. 2018). It is also prohibited for a foreign worker to transfer their sponsorship more than twice during the period of employment in Lebanon.

In September 2020, Lebanon introduced a new standard unified contract, aiming to rectify the power imbalance between workers and their employers and grant workers key labour rights, such as a 48-hour work week, a weekly day of rest, overtime pay, sick pay, annual leave and the national minimum wage. The new contract would have also enabled workers to terminate their contracts without the consent of their employer, removing one of the most abusive elements of the *kafala* system (ILO 2020b). However, a month

after the adoption of the new unified contract, and upon petition by the Syndicate of the Owners of Recruitment Agencies, Lebanon's State Shura Council, its top administrative court, suspended the implementation of the new unified contract in October 2020 (Human Rights Watch 2020). The Shura Council ruled in favour of the recruitment agencies on the ground that it would inflict "severe damage" on the agencies' interests. The Council made no reference to the rights of migrant domestic workers in its decision.

Enforcement

Lebanon's judiciary has reportedly failed in fulfilling and protecting the basic rights of migrant domestic workers. Usually, workers are presented with the choice of remaining with their employer (who could be abusive or exploitative) or leaving Lebanon. Scant options or pathways are available between these choices (ILO 2020). The judicial system remains largely inaccessible and unresponsive to foreign workers. Domestic workers also face peculiar obstacles in accessing the courts. A Human Rights Watch review of 13 criminal cases brought by migrant domestic workers against employers found that they took excessive time to resolve (32 months on average), most workers are unrepresented by legal counsel in courts, redressal mechanisms are largely inaccessible, and many workers face complete inaction from police and judicial authorities when they lodge complaints. A significant number of migrant workers are also deported while trials are still underway (ILO 2020). Human Rights Watch did not find a single example amongst the 114 cases it reviewed of authorities prosecuting employers accused of overworking workers, locking them inside homes, confiscating passports, or denying food (Human Rights Watch 2020b). In many cases where an employer had accused a migrant domestic worker of theft, the courts have convicted workers solely on the basis of the employer's accusation – even if it was unsubstantiated or vague (Human Rights Watch 2020b).

Sex-based discrimination

Prostitution is criminalized in Lebanon; however, a law on public health from 1931 permits the sale of sex on licensed premises, although the licensing system no longer operates and no new

118 Articles 91 and 92.

licenses have been granted since 1975. A 1998 law also forbids businesses from having rooms available for selling sex. In order to avoid these laws, sex businesses have changed their official status to “entertainment venues”. “Artist” visas¹¹⁹ are associated with the sale of sex at these types of entertainment venues. Many migrant women working as sex workers enter Lebanon through this visa, which permits them to work as entertainers. A large number of artist visas are given to women from Eastern Europe, who end up working in nightclubs. This arrangement has been shown to contribute to increasing women’s vulnerability and exploitation (UN Women 2018b).

The conditions of work for artist visa holders are regulated by the General Directorate of General Security and include mandatory medical examinations, pregnancy tests¹²⁰ as well as rules for controlling their movements, isolating them, and stigmatizing them. Some of the measures of isolation and discrimination against these women include: detention upon arrival until a medical exam has taken place and test results are known and cleared (if a sexually transmitted disease is present, the woman is deported); and signing of a contract agreeing to set conditions for her movement and work. In practice, artists are only permitted to live in hotels or licensed accommodations, where they are often isolated on a separate floor by placing doors and barbed wire on the stairs and taking measures to prevent the use of the electric elevator by others to reach their floor (UN Women 2018b). They are not permitted to leave between the hours of 5 am and 1 pm without the approval of the General Security and cannot work for another employer even after the expiry of the contract. The General Security has broad powers to take administrative decisions to deport them and ban their return. Women on artist visas are also denied the right to self-defense or the right to lodge grievances (UN Women 2018b).

Lebanon ratified the CEDAW in 1997 with reservations, namely on the right of Lebanese women to pass on their nationality to their children and articles related to the personal

status laws. This also has important implications on the civil and labour rights of children of foreign women born in Lebanon (e.g., children of domestic workers).

Despite the high participation of girls in school, only 29 per cent of women are in the labour force compared to 72 per cent for men (UN Women et al. 2018). Moreover, the gender pay gap in Lebanon is yet to be addressed by policy makers. On average, a women earns 71 per cent of what men earn. Higher education correlates with lower gender pay gaps, although gaps remain even among those with higher education. The gap that exists upon arrival to the labour market is considerable due to discriminatory promotion policies (Abdallah Dah et al. 2010). There are also negative implications of the cash economy in Lebanon, which shows that male graduates often seek better paid jobs abroad while women graduates bear the burden of unemployment or lower paid jobs mostly in the informal economy. As professional opportunities become scarce for Lebanese women, fewer of them are available or willing to meet the demands of poorly protected jobs and, in particular, jobs in the care economy where low-paid migrant domestic workers are present.

2.6.5 Examples of labour market discrimination

Discrimination in domestic work

In Lebanon, domestic workers (and workers in the agriculture sector) are excluded from the national labour law. This exclusion increases the risk of forced labour and excludes workers from protective mechanisms that could safeguard their rights. For instance, labour inspectors have no role to play in monitoring working conditions in the house (the workplace); the number of working hours and daily and weekly rests are determined by the employers, and end-of-service and social security benefits do not apply. This exclusion from the labour law also limits the opportunity of workers to enjoy freedom of association and collective bargaining and adds to their isolation. The majority of domestic workers in Lebanon are female migrant workers,

119 Lebanese law defines a foreign artist as “a person who performs in places where spirits are sold in retail and where shows are performed with music, with or without food served”.

120 See the General Directorate of General Security’s page on [Entry of Artists in Nightclubs](#); United States Department of State 2018, 55. Lebanon has issued several laws on human trafficking since 2002, e.g., Laws 408/2002, 474/2002, 682/2005, 739/2006, Decree No. 3631/2010 and Decree No. 4986/2010.

and being outside the labour law reinforces their vulnerability rooted in the sponsorship (*kafala*) system. And while organizing of migrant domestic workers through unions and civil society organizations has been taking place informally in the country for the last decade, they are not allowed to bargain collectively.

In 2020, the wages of domestic workers fell significantly as a result of the currency devaluation. Migrant domestic workers started agreeing to payments in Lebanese pounds instead of US dollars, with the hope that they could stay and survive until the situation changes. Their situation was further aggravated by the COVID-19 pandemic, which placed migrant workers at greater risk of exploitation and which made repatriation difficult for many.¹²¹

2.7 Nepal

2.7.1 National law and policy

Nepal has ratified most international conventions with provisions related to non-discrimination and equality. It is party to the CEDAW and the Convention on the Rights of Persons with Disabilities (CRPD). Similarly, it has ratified Conventions Nos 100, 111 and 169.¹²² Nepal has also translated several international commitments into national laws. Article 54 of the 2015 Constitution of Nepal sets the policies on social justice and inclusion to be undertaken by all state machineries to end de facto discrimination and inequalities. The Constitution also has provisions to facilitate the formation of a parliamentary committee to monitor the progressive implementation of such policies. Similarly, Article 18 of the Constitution guarantees all citizens the right to equality and stipulates that the State shall not discriminate against citizens on the grounds of origin, religion, race, caste, tribe, sex, physical conditions, disability, health, matrimonial status, pregnancy,

economic condition, language, region, ideology or on similar other grounds.

The new Labour Code of 2017 prohibits discrimination on the basis of sex.¹²³ However, the legislation fails to protect all workers by prohibiting all forms of direct and indirect discrimination on all the grounds covered by the Convention. Nepal's National Employment policy of 2015 includes the objective of creating equal opportunities in employment across all sectors and targeting marginalized social groups. A National Gender Equity Policy is awaiting approval.

Nepal also passed a Right to Employment Act in 2018, which provides that every citizen shall have the right to employment,¹²⁴ and that, except where special provisions apply, no person shall be discriminated against on the grounds of origin, religion, colour, caste, ethnicity, sex, language, region, ideology or similar other grounds.¹²⁵ The Act provides for a fine of 10,000 Nepalese rupees in any case of discrimination committed by an employer.¹²⁶

Nepal's Caste-Based Discrimination and Untouchability (Offence and Punishment) Act of 2011 prohibits caste-based discrimination and "untouchability".¹²⁷ Caste-based discrimination and untouchability are defined as any acts based on "custom, tradition, religion, culture, rituals, caste, race, descent, community or occupation",¹²⁸ and are prohibited in a broad range of areas, including with respect to carrying on a profession or business; producing, selling or distributing any goods, services or facilities; in employment or remuneration. The Act also prohibits any other kind of intolerant behaviour and the dissemination or transmission of any material that denotes the hierarchical supremacy of a particular caste or race, and any conduct indicating caste-supremacy or hatred.¹²⁹

¹²¹ ILO, *Impact of COVID-19 on migrant workers in Lebanon and what employers can do about it*.

¹²² Nepal has ratified all fundamental ILO Conventions, except the Abolition of Forced Labour Convention, 1957 (No. 105).

¹²³ Section 180.

¹²⁴ Section 3.

¹²⁵ Section 6.

¹²⁶ Sections 25 and 26.

¹²⁷ Sections 3 and 4.

¹²⁸ Section 4.

¹²⁹ Section 4.

Sections 17, 18 and 19 of the National Civil Code of 2017, which came into force in 2018, provide for the equality of all citizens, and rights against discrimination and for positive discrimination/affirmative action. Section 19 of the Civil Code spells out the special measures ensured by the law for the protection, empowerment and development of citizens – including the socially or culturally backward population. Chapter 10, Sections 160 and 161, of the National Penal Code 2017 criminalize discrimination.

Nepal passed a Sexual Harassment at the Workplace Act in 2015 and has a national action plan against trafficking in persons, with a particular focus on women and children (2012). It also has an agriculture development strategy, (2015), which considers the achievement of gender equality in agriculture as an integral component of development.

2.7.2 Jurisprudence

Indirect discrimination

In response to the COVID-19 restrictions and containment measures imposed by the government, the Supreme Court responded to a public interest litigation in April 2020 on the rights of returning migrant workers. It examined the impact of the Government's action on people from a discrimination and equality perspective and found that the impact of lockdown orders applied neutrally to all persons, cutting across societal divisions, but that the impact on livelihoods and consequently, the lives of certain groups, would be higher in some cases than in others. It therefore found that the lockdown orders violated Article 18 of the Constitution and permitted migrant workers to return to their native places (Subedi 2020).

Social origins

In 2016, the Supreme Court ordered the government to formulate rules and take necessary steps towards ensuring the

effective implementation of the Caste-Based Discrimination Act. In response to the order, the government formulated and adopted a regulation to receive complaints (however, this regulation still falls short of providing protection to victims and witnesses, and in providing the full implementation of laws dealing with caste-based discrimination and untouchability practices).¹³⁰

Sex-based discrimination

The Supreme Court declared in an unequivocal and consistent manner that once women step out of the family and into the labour market, their Constitutional right to equality demands non-discrimination on the basis of gender and equal economic treatment between men and women. In an early case on quotas, *Pradhosh Chetri* (2004), the Supreme Court directed the government to enact legislation to uplift marginalized groups in society in pursuit of achieving equality.¹³¹ In another case, *Pro-Public* (2006), the Supreme Court ordered the government to provide equal duration probation to female civil service employees.¹³² In another case, the Supreme Court struck down a Royal Nepal Army rule providing for the allowance to daughters of service men to be discontinued after their marriage on the basis that it violated the right to equality.¹³³ The Court also invalidated a provision that women, unlike men, had to be unmarried to join the police force.¹³⁴

In relation to women working in the entertainment industry, the Supreme Court issued an order to the government to enact legislation guaranteeing a safe and healthy work environment for women employed in dance bars and massage parlours, as well as to provide interim directives to regulate these businesses to protect women from sexual harassment.¹³⁵

The Supreme Court also struck down Section 15(6) of the Human Traffic and Transportation Act (2007), which criminalized the non-cooperation

130 Shyam Bishwokarma for *JuRI-Nepal v. Government of Nepal*, OPMC, and decision dated 2073/3/26 (10 July 2016).

131 *Pradhosh Chetri v. Office of the Prime Minister*, 2061, 46(7) NKP 901 (2004).

132 *Pro-Public v. Office of the Prime Minister*, 2063, 48(1) NKP 1 (2006).

133 *Mira Dhungana v. Office of the Prime Minister*, 2064, 49(6) NKP 972 (2007). Ruling in 2012 based on the Writ Petition No. 2068-W5-0046 of year 2068.

134 *Sapana Pradhan Malla v. Office of the Prime Minister*, 2066, 51(7) NKP 1089 (2009).

135 *Prakash Mani Sharma v. Office of the Prime Minister*, 2067, 52(9) NKP 1480 (2010).

of human trafficking victims (mostly women) in proceedings against traffickers.¹³⁶

2.7.3 CEACR comments

The comments of the CEACR over the past decade have indicated progress made at the national level in terms of strengthening national legislation and policies and their alignment with the principles of Convention No. 111 as well as mechanisms for implementation.¹³⁷

The Committee also referenced its General Observation of 2018 on race, colour and national extraction and reiterated its recommendation to adopt a comprehensive and coordinated approach to tackling the obstacles and barriers faced by persons in employment and occupation because of their race, colour or national extraction, and to promote equality of opportunity and treatment for all. Such an approach should include the adoption of interlocking measures aimed at addressing gaps in education, training and skills, providing unbiased vocational guidance, recognizing and validating the qualifications obtained abroad, and valuing and recognizing traditional knowledge and skills that may be relevant both to accessing and advancing in employment and to engaging in an occupation.

National law and policy

The CEACR had requested the government to ensure the creation of a new piece of legislation that defined and prohibited direct and indirect discrimination on at least all the grounds set out in the Convention and covered all workers and all aspects of employment and occupation over a number of years. In 2019, it pointed out with interest the recent adoption of several legislative provisions on non-discrimination – Article 18(1) of the new Constitution of 2015; Section 180 of the new Labour Act of 2017 and Section 6 of the Labour Regulations of 2018; Section 18 of the new National Civil Code of 2017; and Sections 3 and 6 of the Right to Employment Act of 2018. The Committee noted with concern that the grounds of political opinion and national extraction were not expressly covered by the

national legislation, which does not specifically refer to direct and indirect discrimination in employment and occupation. It also observed with concern that the legislation only granted protection to citizens.

Sexual harassment

Compared to other countries in the region, Nepal's female labour force participation is rather high.¹³⁸ However, employment often requires migration, and sexual harassment among domestic workers who are often migrants from the hinterland is an issue.¹³⁹ The CEACR touched upon the adoption of the Sexual Harassment at the Workplace (Prevention) Act (2015). However, it also observed with concern that the rates of violence against women were increasing, that girls suffered sexual harassment, corporal punishment and abuse in schools, and that cases of sexual harassment were under-reported. It also noted that judicial and law enforcement officers prevented the registration of cases of sexual and gender-based violence, and that the Sexual Harassment Act was insufficiently implemented. It also endorsed the CEDAW's recommendation that a confidential, safe complaint mechanism be established and that access to justice for victims of sexual harassment in the workplace be facilitated. Lastly, noting that criminal proceedings required a higher burden of proof, the Committee recalled that the establishment of easily accessible dispute resolution procedures (in addition to criminal proceedings) would make an effective contribution to combating discrimination.

Social origins

People from lower caste groups face multiple obstacles in accessing local employment and hence often rely on migration to make a living. The CEACR has raised concerns about caste-based discrimination for years. It has noted the progress made in terms of legislation, including the adoption of relevant legislation prohibiting caste-based discrimination and the constitutional recognition of the National Dalit Commission (Articles 255 and 256), as well as the numbers of Dalit men and Dalit women

136 *Mira Dhungana v. Office of the Prime Minister* (2069) (2012).

137 *Observation* (CEACR) – adopted 2019, published 109th ILC session (2021).

138 According to the Nepal Labour Force Survey 2013/2014, 80.1 per cent of women participate in the nation's labour force.

139 WIEGO Policy Brief No. 20, *Domestic Workers, Risk and Social Protection in Nepal*, October 2020.

participating in government vocational and skill training programmes. However, the Committee recently indicated the reported insufficient funding of the National Dalit Commission; the insufficient implementation of the Caste-Based Discrimination and Untouchability (Offence and Punishment) Act of 2011; as well as reports that law enforcement officials were sometimes reluctant to act upon caste-based discrimination. It also raised concerns as to the way in which caste-based occupational specialization obstructed socio-economic mobility and assigned members of certain castes to degrading and/or exploitative occupations.

Civil services

The CEACR noted that marginalized groups, including the Mashesis, Dalits and Danajatis, were severely underrepresented in most state and civil service structures, including courts, law enforcement agencies and local authorities. At this time, the CEACR requested the government for information on reservations, quotas for women and marginalized groups in the civil service, and the steps by it taken to ensure that target groups are admitted to the civil service.

The Committee noted the adoption on the National Employment policy in 2015 and its objectives of creating equal opportunities in employment across all sectors, especially targeting marginalized social groups. It also observed, however, a delay in the adoption of the National Gender Equality Policy.

Sex-based discrimination

Over the years, the CEACR has raised concerns about the significant horizontal segregation in certain industries. It has noted that statistics indicate that the labour force participation of women is still substantially lower than that of men, unemployment is higher and that women are concentrated in the informal economy, mainly in agriculture (33 per cent), wholesale and retail trade (20.6 per cent) and manufacturing (13.4 per cent), while representing only 13.2 per cent of managers (compared to 86.8 per cent for men). It acknowledged and reiterated CEDAW's concerns about the lack of information on measures taken to eliminate horizontal and vertical segregation in the labour market; the lower enrollment and higher drop-out rates among girls; women's lack of access to natural resources and credit facilities, especially among

those belonging to vulnerable groups; and the low level of awareness among women and girls about their rights and the mechanisms available for gaining access to justice and seeking remedies.

Special protection measures

Over the years, the Committee has noted the quotas introduced in the civil services, police and other government services in order to increase the representation of women and disadvantaged groups, but observed large disparities between men and women recruited in each target group and the low numbers of women in the civil service. It also touched upon the recent laws, the new Constitution and new National Civil Code of 2017, which provided for the adoption of special provisions for the protection, empowerment or advancement of disadvantaged categories of persons such as women socially and culturally disadvantaged, Dalits, minorities, indigenous people, persons with disabilities, or citizens originating from isolated regions and financially deprived citizens.

Restrictions on women's employment

The CEACR has raised concerns around the requirement that Nepalese migrant domestic workers must have reached the age of 24 to emigrate and the prohibition of women with a child below the age of two from taking up domestic work outside Nepal. It also noted that in early 2017, the parliamentary International Relations and Labour Committee instructed the government to temporarily stop Nepalese women migrants from going to the countries of the Gulf Cooperation Council for domestic work. The CEACR reiterated the Special Rapporteur's concerns about stigma around the migration of women, loosely associated with prostitution or trafficking for sex work, and highlighted that the solution to the problems faced by domestic workers could not be to discriminate against them through the imposition of bans or other means of violating their right to leave the country. It also foregrounded the additional restrictions imposed on women with regard to employment abroad, the restrictions on their freedom of movement, and limited predeparture training programmes, which leave women exposed to discriminatory practices, including physical abuse and sexual assault, forced labour and unequal pay.

Enforcement

The Committee has indicated that significant gaps remain in the implementation of national laws and regulations and has expressed concern about the effectiveness of labour inspections and enforcement mechanisms.

2.7.4 Additional discrimination in law and in practice

Sex-based discrimination

The restrictions in the Foreign Employment Act as well as the ban imposed on the recruitment of Nepalese citizens as domestic workers in the Gulf, have, in effect, pushed women, particularly women who are displaced, and rural, indigenous and Dalit women and girls, into irregular and informal patterns of migration, which expose them to a much greater risk of becoming victims of trafficking.¹⁴⁰ Far from being prevented from working in the Gulf, the women have been forced to resort to travelling through neighbouring countries such as India, where they may be picked up by a recruitment agency, or persons posing as recruitment agencies, before making their onward journey to the Middle East. Mechanisms used to enforce these laws have also only placed women seeking to migrate for work at greater risk. There is also an absence of support mechanisms for the reintegration of Nepali migrant women who return to Nepal.¹⁴¹ In addition to women being forced to seek informal and illegal routes for labour migration, the system for the early identification and reporting of trafficking are weak and insufficient in terms of victim and witness protection.¹⁴² There have been reports of women victims of trafficking having been arrested for acts committed as a consequence of having been trafficked.¹⁴³

In addition to discrimination against women in terms of migration, Nepal's approach to gender equality is not sufficiently in line with the principles set out in Convention No. 111. Discriminatory laws and provisions in

the Constitution, including those related to passing on citizenship and laws with respect to inheritance, land ownership and assets, are indicative of persistent patriarchal norms. Women remain under-represented in the formal economy, are highly segregated in the labour market and experience a significant pay gap vis-à-vis men. There also remain widespread discriminatory cultural practices. Women (over 50,000) working in the "entertainment" sector in the Kathmandu valley are severely stigmatized and frequently subjected to abuse.¹⁴⁴ There are reports of harassment and violence against women in prostitution by law enforcement officers, the carrying of condoms being used as evidence of engaging in prostitution, and the extortion and arrest of women in prostitution.

Women, particularly those of Dalit origin, continue to suffer from harmful traditional practices such as forced and early marriages, accusations of witchcraft, the *deuki* tradition involving the offering of girls to deities to fulfill religious obligations, *jhumas* (the offering of young girls to Buddhist monasteries for religious functions), *kamlari* (the offering of girls for domestic work to the families of landlords), *chapaudi* (isolating menstruating girls) and *badi*, which is a widespread practice of prostitution.¹⁴⁵ These practices are indicative of persistent structural and societal discrimination against women, and Dalit women and girls in particular. The Commission for Women's Rights has a weak mandate and is unable to effectively protect or promote women's rights as it is not able to receive complaints or issue legally binding rulings.¹⁴⁶

Social origins

The Comprehensive Peace Agreement (CPA) of 2006 emphasized the need for social and economic transformation in Nepal.¹⁴⁷ There is widespread recognition that the State had failed to improve the social and economic conditions of Dalits and other marginalized groups, which has

140 CEDAW, CEDAW/C/NPL/6.

141 CEDAW, CEDAW/C/NPL/6.

142 CEDAW, CEDAW/C/NPL/6.

143 CEDAW, CEDAW/C/NPL/6.

144 Committee on Economic, Social and Cultural Rights, E/C.12/NPL/CO/3.

145 CEDAW, CEDAW/C/NPL/6.

146 CEDAW, CEDAW/C/NPL/6.

147 Comprehensive Peace Accord (CPA), concluded between the Government of Nepal and the Communist Party of Nepal (Maoist), 21 November 2006, subsections 3(5) and 7(1)(1).

led to past conflicts and aggravated situations of conflict.¹⁴⁸

The caste-based system remains deeply entrenched in Nepal and obstructs social and economic mobility, assigning members of certain castes to degrading and/or exploitative work.¹⁴⁹ Almost half the Dalit population live below the poverty line in Nepal (DNF et al. 2018), and literacy rates among Dalit groups are far lower than the national average (Dalit NGO Federation (DNF) et al. 2018). Dalits are also underrepresented in educational curricula and face discrimination in schools.¹⁵⁰ These disadvantages are further compounded for women belonging to Dalit and marginalized groups.¹⁵¹ Landlessness among them remains high. This has made Dalits economically vulnerable and dependent on landlords. Most Dalit victims of violence and discrimination are agricultural and occupational labourers who tend to be landless. Until recently, there was no penalty for the failure to pay a minimum wage or for paying an unequal wage on the basis of prohibited grounds including gender and caste.¹⁵²

The Caste-Based Discrimination and Untouchability Act has not been implemented effectively. Similarly, although domestic law has prohibited bonded labour, including *haliya* and *kamaiya*, which disproportionately affect Dalits and other marginalized castes, reports indicate that these practices persist.¹⁵³ The programmes for abolition of bonded labour lack resources and sustainable rehabilitation plans. Law enforcement agencies have failed to adhere to caste-based discrimination laws by denying FIRs and failing to investigate and prosecute the

perpetrators of caste-based discrimination.¹⁵⁴ Only a handful of cases have been prosecuted under the Caste-Based Discrimination Act despite widespread discrimination and abuses (DNF et al. 2018). Further, cases under the Caste-Based Discrimination Act can only be brought to the police within three months of the alleged offence.¹⁵⁵

Reports indicate that the National Inclusion Commission, the Madheshi Commission and the Tharu Commission are not yet operational, and due to inadequate resources, the National Dalit Commission is only operational in Kathmandu.¹⁵⁶

Indigenous peoples (Janajatis)

Despite the ratification of ILO Convention No. 169, significant discrimination against indigenous groups persist in practice. Indigenous peoples were excluded from the drafting process of the 2015 Constitution, and only 59 of the 81 indigenous peoples of Nepal are recognized by domestic legislations; there is an absence of laws guaranteeing indigenous peoples' rights over their traditional lands and resources.¹⁵⁷ Indigenous people represent almost half of all trafficking victims in Nepal.¹⁵⁸ Reports of severe harassment against indigenous leaders persist and the slaughtering of cows was criminalized, resulting in a severe discriminatory impact on indigenous peoples, for whom eating beef has cultural significance.¹⁵⁹ In terms of education outcomes, indigenous peoples remain underrepresented in higher secondary education and in teaching positions. Indigenous groups are also disproportionately landless, which leaves them particularly vulnerable to economic exploitation by landowners.¹⁶⁰

148 See Government of Nepal, The Three-Year Interim Plan (2007/08 – 2009/10).

149 CERD, CERD/C/NPL/17-23.

150 CERD, CERD/C/NPL/17-23.

151 CEDAW, CEDAW/C/NPL/6.

152 In view of the fact that discrimination in wage rates between women and men is frequently reported in the media, the constitutional and statutory guarantee of "equal pay for equal work" appears to be weak in application.

153 CERD, CERD/C/NPL/17-23.

154 SAMATA Foundation, Report of the District Consultation held in Bara, Sunsari and Dailekh, dated 1 March 2016, 26 March 2017 and 23 Feb 2016 respectively.

155 CERD, CERD/C/NPL/17-23.

156 CERD, CERD/C/NPL/17-23.

157 CERD, CERD/C/NPL/17-23.

158 CERD, CERD/C/NPL/17-23.

159 CERD, CERD/C/NPL/17-23.

160 CERD, CERD/C/NPL/17-23.

2.7.5 Examples of labour market discrimination

Discrimination by sex

Dalit women face wide discrimination; whether from slightly higher or lower castes, they spend more time engaged in agricultural or domestic work than their male counterparts (Cameron 2005: 93). Agricultural work is mostly performed by Dalits (Cameron 2005: 93). According to Cameron, Dalit women are mostly involved in “weeding and digging the fields, carrying manure (fertilizer), and transplanting seedlings” (Cameron 2005: 100). Conversely, Dalits are involved in ploughing and sowing fields and digging canals. Only a fraction of the surveyed workers from upper castes were involved in digging canals, transplanting seedlings and carrying fertilizers.

Discrimination against Dalits and Janajatis

A large proportion of Dalits depend on elementary occupations (as per ILO definition) for their livelihoods. This suggests that they have been excluded from better employment opportunities. The lower level of education combines with discrimination to form barriers for them to obtain better jobs. For instance, 42.5 per cent Tarai/Madhese Dalits earn their livelihood from elementary occupations. Among men, 1 out of 12 is engaged in professional/technical jobs, whereas it is half that for women. Among women, 1 out of 25 is now engaged in such jobs. Compared to their hill counterparts, only 0.8 per cent of women from the Madhese Dalits are engaged in such jobs. In rural, traditional contexts, Dalit groups tend to be employed in their own traditional occupations, such as ironwork, goldsmithing, tailoring, shoemaking and bamboo crafts (Lama

and Das 2014). Since these occupations are considered lowly, the craftsmanship required for them does not translate into commensurate remuneration. Dalits are often more commonly found in bonded labour practices, such as *balighare* and *khalo*. Remuneration in kind is mostly minimal for their work (they are often paid in grains). Dalit women are subject to triple discrimination – for being a woman, being a Dalit and being a Dalit woman. In many cases, Dalit women have faced multiple forms of abuse and atrocities and are also stigmatized as *boksi* (witches), financially extorted under the dowry system, shunned through the *Chhaupadi Pratha* (the practice of isolating them in separate sheds during menstruation periods), subjected to sexual abuse and domestic violence, and stigmatized through untouchability.

Landlessness among Dalits is extreme – 36.7 per cent among the hill population and 41.4 per cent of Madhese Dalits and those that do hold land have very small landholdings.¹⁶¹ Landlessness has made Dalits economically vulnerable and dependent on landlords. Most Dalit victims of violence and discrimination are agricultural workers or other day labourers, and are generally landless. The root causes of the exploitative systems like *haliya*,¹⁶² *balighare/khala*,¹⁶³ *charuwa* and *haruwa*¹⁶⁴ are directly associated with landlessness and smallholdings.¹⁶⁵ Approximately 42 per cent of Dalits fall below the poverty line in Nepal, which is 17 per cent higher than the national average (25.2 per cent). Among the Dalits of both hill and Madhese origin, every two in five persons are the below poverty line.¹⁶⁶ Dalits have 9 per cent reservations in all public-sector employment out of the 45 per cent reserved seats; however, Dalits' livelihood and employment situation remains precarious as they continue to depend on

161 National Planning Commission Secretariat, Government of Nepal, [Nepal Living Standards Survey 2010-11](#).

162 *Haliya*: The word *haliya* comes from 'halo', which means a plough; so a person ploughing the field is called Haliya (without bondage – Hali; with bondage – Haliya).

163 *Balighare* is a traditional system of paying wages – not in the form of cash but in the form of crop or kind. This system does not pay enough in comparison to the work done and has been found to be very exploitative in economic terms and very humiliating in social terms. The main victims of this system are Dalits. The Dalit households who provide services go to those families who use their services and collect a certain amount of grain (mostly maize, millet and sometimes rice).

164 *Charuwa*: in Terai or Madhese, the terms *haruwa* and *charuwa* are used synonymously and sometime pronounced together. *Charuwa* means wanderer and herder but is used in reference to semi-bonded labour. In the Terai region, poor families offer themselves as bonded labour to a landlord, who then agrees to use the labour of the family to cultivate crops and in return provides them shelter and grain. *Haruwa* means defeated and is used to describe a similar kind of semi-slavery system in Terai/Madhese. *Haruwa* are mostly landless, not having proper means of production; not necessarily Dalits, they could be indigenous people such as Gharti, Bhujel, Tamang of the hill and Tharu of Terai (NNDSSWO).

165 See Dalit Civil Society Organizations Coalition for UPR, Nepal and International Dalit Solidarity Network (IDSN) (2015).

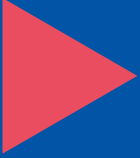
166 National Planning Commission Secretariat, Government of Nepal, [Nepal Living Standard Survey 2010](#).

elementary occupations based on their caste (i.e. blacksmithing, leatherworks, tailoring etc.) because of poor access to better jobs. Due to the practice of segregation, Dalits have been known to be denied the right to earn a livelihood by running their own businesses, such as tea shops, dairies or small hotels.

Nepal as a country is the homeland of 125 caste/ethnic groups, 123 languages and 10 religious groups. Indigenous peoples comprise 35.8 percent of the total population

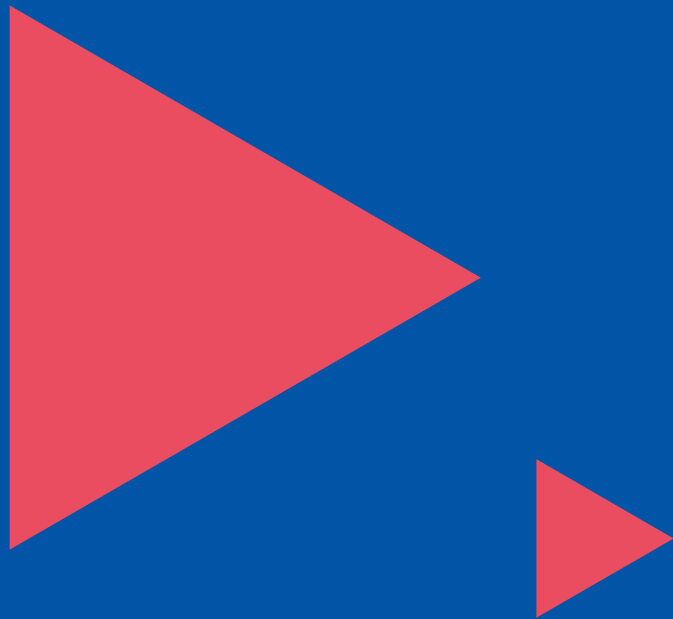
of Nepal. Nepal has legally recognized 59 indigenous nationalities, referred to as Janajati (CBS 2012). The new Constitution of Nepal bars discrimination of any form, but caste discrimination is still deeply anchored in social and cultural customs and practices. This is an important factor that legitimizes subjugation, exclusion, marginalization, discrimination and dispossession from lands, territories and natural resources.





3

Structural determinants of discrimination



This chapter provides some examples of the inherent forms of discrimination that are anchored in social norms and traditions as well as laws and policies.

3.1 Comparative analysis of discriminatory laws and policies affecting the world of work

This section comparatively reviews how the legal systems of countries in the region codify different forms of labour discrimination affecting migrant workers. A more comprehensive country by country assessment of the legal and policy environments for wider forms of labour discrimination can be found in Chapter 2.

3.1.1 Ratification of international instruments related to labour discrimination

As can be seen in table 1, all countries listed – with the exception of Oman – have ratified Convention No. 111. All countries have ratified CEDAW; only Bangladesh has ratified the ICRMW, and none of them have ratified ILO migrant worker conventions (Nos 97 and 143) nor Convention No. 189.

Migrant workers' countries of origin could do more to protect the rights of their workers, by ratifying or becoming party to the migrant worker conventions as well as the domestic workers convention. Beyond ratification, it is important to implement international labour standards.

3.1.2 Comparative constitutional gaps

All constitutions referred to in this section have clauses on discrimination. For example: Article 18 of Bahrain's Constitution states: "People are equal in human dignity, and citizens are equal before the law in public rights and duties. There shall be no discrimination among them on the basis of sex, origin, language, religion or creed." As can be seen in the "explanations" column of table 2, other countries have similar provisions with different variations. In that sense, all the countries listed below can claim that discrimination is generally addressed in their respective constitutions. However, there are important omissions and exclusions, depending on the types of discrimination that are explicitly addressed, that are worth noting. Table 2 provides some examples.

► **Table 1. Status of ratification of some international instruments with provisions to protect migrants and women from discrimination**

Country	ILO C111	CEDAW State Parties	ICRMW State Parties	ILO C97, C143, C189 ¹⁶⁷
Bahrain	Ratified in 2000	Accession in 2002	Not State Party	Not ratified
Bangladesh	Ratified in 1972	Accession in 1984	Accession 2011	Not ratified
India	Ratified in 1960	Accession in 1993	Not State Party	Not ratified
Jordan	Ratified in 1963	Accession in 1992	Not State Party	Not ratified
KSA	Ratified in 1978	Accession in 2000	Not State Party	Not ratified
Kuwait	Ratified in 1966	Accession in 1994	Not State Party	Not ratified
Lebanon	Ratified in 1977	Accession in 1997	Not State Party	Not ratified
Nepal	Ratified in 1974	Accession in 1991	Not State Party	Not ratified
Oman	Not ratified	Accession in 2006	Not State Party	Not ratified
Qatar	Ratified in 1976	Accession in 2009	Not State Party	Not ratified
UAE	Ratified in 2001	Accession in 2004	Not State Party	Not ratified

Source: Authors' analysis

¹⁶⁷ Migration for Employment Convention (Revised), 1949 (No. 97), Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143) and Domestic Workers Convention, 2011 (No. 189).

► **Table 2. Constitutional provisions against specific forms of discrimination**

Country	Explicit constitutional provision against specific forms of discrimination					National extraction and social origin	Explanations
	Race and colour	Sex	Religion	Political opinion			
Bahrain	No	Yes	Yes	Yes	Yes		Article 18 of the Constitution of Bahrain (1973) covers sex, origin, language, religion and creed.
Bangladesh	Yes	Yes	Yes	No	Yes		Articles 19, 28, 29 of the Constitution of Bangladesh (1972) provide all listed protections, except for political opinion.
India	No	Yes	Yes	No	Partial		Articles 15 and 16 of the Constitution of 1950 cover religion, race, caste, sex and place of birth; however, only citizens of India were included.
Jordan	Yes	No	Yes	No	No		Article 6 of the Constitution of 1952 covers race, language and religion. Only Jordanians are covered.
Kuwait	No	Yes ¹⁶⁸	Yes	No	Yes		Article 29 of the Constitution of 1962, reinstated in 1992, covers gender, origin, language and religion.
Lebanon	No	No ¹⁶⁹	Yes	Yes	No		Preamble C and Article 7 of the Constitution of 1926 cover opinion and belief. However, non-nationals are not covered.
Nepal	Yes	Yes	Yes	Yes	Yes		Article 18 of the Constitution of 2015 provides protection against all forms of discrimination listed under C111 and more.

Source: Authors' analysis

Since this paper focuses on migration, references or omissions related to discrimination by national extraction and social origin are particularly important. In South Asia, these also include caste. References or omissions related to sex are also particularly important, given the significance or not of women's employment in the labour market. The following correlated observations are noteworthy:

► India's 1950 Constitution did not specifically cover discrimination against those who are not Indian citizens. This is relevant in the context of the

Citizenship (Amendment) Act of 2003 that mandated the creation of a National Register of Citizens to identify, detain and deport those who are deemed to be illegal, and the Citizenship (Amendment) Act, 2019, which provides a pathway to Indian citizenship for certain non-Muslim minorities of other countries with populations of Indian origin.¹⁷⁰

► While both Jordan's 1952 Constitution and Lebanon's 1926 Constitution emphasize the notion of equality, they reserve protections for nationals only and do not

168 Article 26 of the Private Sector Labour Law (2010) provides that women should be paid the same as men for the same job (but not for work of equal value).

169 Article 26 of the Labour Code prohibits employers from discriminating between workers on the basis of gender with regard to the type of work, pay, employment, promotion, vocational training and clothing. However, there are no penalties in the Code for failure to comply with these provisions.

170 The UN Human Rights Office of the High Commissioner has commented that "the new Citizenship (Amendment) Act 2019 is fundamentally discriminatory in nature" (The UN Human Rights Office of the High Commissioner, 2019).

specifically mention discrimination by gender. This is of significance as workers in occupations in which mostly migrant and women work are not covered by the same protections that apply to other workers.

- In the case of Bahrain, Kuwait and Lebanon, race and colour are not grounds for discrimination according to their respective constitutions.

In summary, many constitutions entertain a certain degree of ambivalence by containing both universal protections as well as omissions or exclusions of certain types of discrimination.

This ambivalence is important as it legitimizes an appearance of universality while creating the space for discriminatory hierarchies that are further reproduced in cascading laws and policies.

3.1.3 Comparative exclusion of certain types of workers from national labour laws

Almost all labour laws of the countries listed below include general worker protections as well as omissions, or specific exclusions of certain occupations or workers. Table 3 illustrates some of these.

► **Table 3. Examples of exclusions or omissions of certain workers or sectors from labour laws**

Country	Examples of explicit exclusions or omissions of certain workers or sectors from labour laws
Bahrain	Article 2 of Bahrain's Labour Law for the Private Sector No. 36 (2012) explicitly excludes domestic workers, agricultural workers, nannies, cooks, drivers and security guards from multiple provisions of the Law. ¹⁷¹ In many of these sectors, workers are mostly migrants. A 2017 decree was issued to establish a model form of contract for "domestic help and similar persons"; however, it leaves it up to the employer to choose working hours, minimum wages and rest time.
Bangladesh	Article 1 of Bangladesh's Labour Act (2006) excludes domestic workers and agricultural workers from its provisions, leaving large numbers of workers, particularly those from indigenous groups, marginalized social backgrounds, internal migrants and women unprotected. In 2011, the Supreme Court directed the government to extend protections to domestic workers, and the government formulated a Domestic Workers Protection and Welfare Policy. However, in practice, this is yet to be implemented and its provisions fall short of international labour standards.
India	India's recent Labour Codes (2020) have in theory introduced some social security benefits for unorganized workers and gig sector workers, but the rules have not been issued yet. Moreover, private households are excluded as a workplace from the Codes, leaving home-based workers and domestic workers without essential labour and civil protections. The new Industrial Relations Code also makes it more difficult for unorganized workers to form unions and organize strikes. At the state level, laws have been passed reserving 75 per cent of private sector jobs for locals; this has been the case in the states of Andhra Pradesh (2019), Haryana (2021) and Jharkhand (2021). These were preceded by "sons of the soil" policies in Maharashtra, Madhya Pradesh, Karnataka, Gujarat, Himachal Pradesh, Telangana and Goa, which provided private industries incentives to hire locals (1968–2019).
Jordan	Article 3 of Jordan's Labour Code excludes public and municipality employees, cooks, gardeners, agricultural workers, domestic workers from key labour protections. Migrant workers, refugees and Palestinians in some occupations are also excluded. ¹⁷² Section 98 of Jordan's Labour Code further restricts the right to form unions to citizens, hindering the ability of migrant workers to organize and collectively represent their rights and interests. While recent regulations provide some protections for domestic, ¹⁷³ garment ¹⁷⁴ and agricultural workers, ¹⁷⁵ they fall short from applying them to other workers.

171 Observation (CEACR) – adopted 2012, published 102nd ILC session (2013).

172 The Ministry of Labour developed a list of closed professions in Jordan. The list applies to migrant workers, Syrian refugees and Palestinians. For details, see رارق ل 58_ رارق ل عي م ج ت ق ي و .pdf (mol.gov.jo).

173 While the Domestic Worker Regulation of 2020 included a provision to pay wages within the first seven days of the following month, it failed to bring it at par with the national minimum wage and it does not specify the means and methods of payment. Moreover, it also lacks ways to ensure compliance in the sector (i.e. labour inspection).

174 The 2019 Collective Bargaining Agreement establishes a wage that is below the Jordanian minimum wage.

175 Agricultural worker regulation, 2020.

Country	Examples of explicit exclusions or omissions of certain workers or sectors from labour laws
Kuwait	Domestic workers are not included in Kuwait's labour law. The Domestic Workers Act ¹⁷⁶ and subsequent regulations set some minimum conditions for their employment, but they cannot change their employment and are not explicitly given the right to establish a workers' union. ¹⁷⁷ Although some restrictions have been lifted for other migrant workers, such as the right to change employers, ¹⁷⁸ other restrictions such as the ban on union organizing apply to them.
Lebanon	Article 7 of Lebanon's Labour Code excludes family enterprise workers, municipal service workers, and agricultural and domestic workers ¹⁷⁹ from certain provisions, as also women workers in certain types of work. ¹⁸⁰ Other regulations and ministerial decisions have also been known to exclude refugees from some occupations. For domestic workers, a standard contract was adopted in 2009; however, it falls short of international labour standards. Nightclub artists are not governed by labour laws but rather by Instructions of the General Security, ¹⁸¹ which also fall short of international labour standards. The proportion of migrant workers among agricultural workers, domestic workers, beauty salon and spa workers and nightclub artists is high. Migrants are also not protected by occupational safety and health provisions that exist for other workers.

Source: Authors' analysis

A common characteristic of labour laws in the countries in table 3 is that they tend to omit or explicitly exclude migrant workers, agricultural workers and women workers, such as domestic workers, from the general provisions applying to other workers. This further entrenches the hierarchy of workers between those who are

fully covered by labour laws and those who are partially covered or fully excluded.

The exclusion or omission from labour laws applicable to general workers is further compounded by provisions granting employers major powers to bestow or remove the legal status of migrant workers.

► Table 4. Some examples of sponsorship law

Country	Examples of sponsorship laws and policies
Bahrain	A combination of regulations and policies, including Bahrain's Labour Law for the Private Sector No. 36 (2012), the Labour Market Regulation Law No. 19 (2006) and the standard unified contract for domestic workers (2017), allow employers to remove the legal status of a migrant worker through the termination of contract, refusal to renew the residency permit of a worker, and filing an absconding report against the migrant worker with the Ministry of Interior.
Jordan	Residency and Foreigners' Affairs Law No. 24 of 1973 Labour Code No. 8 of 1996 Instructions and Conditions for the Employment and Recruitment of Non-Jordanian Workers (2012) Instructions and Conditions for the Employment and Recruitment of Non-Jordanian Workers in Qualified Industrial Zones for 2007
Kuwait	Law No. 17 of 1959 on the Residency of Foreigners, along with the Domestic Workers Act and the Administrative Decision No. 27 of 2021 on Work Permits Procedures, allows employers to remove the legal status of a migrant worker, through the termination of a contract, refusal to renew the residency permit of a worker, and filing an absconding report against the migrant worker.
Lebanon	Decree No. 17561 (dated 18 September 1964) specifies that migrant workers shall unconditionally (without application of reciprocity) benefit from all the rights stipulated in the Labour Code, with the exception of the end of service, rather than dismissal, indemnity.

Source: Authors' analysis

176 Act No. 68 of 2015

177 The Private Sector Labour Law (2010) only mentions that Kuwaitis in the private sector have the right to establish a workers' union; it does not explicitly prohibit non-Kuwaitis from joining such unions.

178 Administrative Decision No. 378/2016

179 The Family Violence Law of 2014 does not protect domestic workers either.

180 Article 27 of the Labour Law continues to prohibit the employment of women in a number of industries and occupations (listed in Annex 1 of the Labour Law). Article 3 of the Labour Code and Article 46 of the Social Security Law also provide welfare benefits to men that do not apply to women. Women are unable to extend the coverage of their national social security to their spouses unless the husband is disabled or at least 60 years old, whereas men are entitled to extend their benefits to unemployed spouses.

181 Working Conditions are set out by instructions of the [General Directorate of General Security](#).

3.1.4 Other laws and jurisprudence

Other types of laws that establish the hierarchies of workers also exist. For example, contract law on labour outsourcing defines categories of workers that are subject to different types of labour protections. Although important, this paper will not review such policies as this could be the subject of an entire book. For more specific information on jurisprudence regarding exclusions or omissions of certain types of workers from conditions applying to general workers, please refer to Chapter 4.

The coverage of different types of workers, in terms of legal and policy protections, is ambivalent in most national legislation. While constitutional provisions will generally contain some universal provisions, omissions and exclusions occur in different ways across national political and legal systems, starting from constitutions and going all the way to policies and enforcement. This duality is important because it allows countries to claim egalitarian credentials while reproducing hierarchical class and labour divisions.

Access to decent work is often restricted to specific privileged populations, while others are only represented in low-paying and precarious jobs. In other words, there is a propensity for labour markets to exclude certain populations from the better jobs and keep them concentrated in the more precarious jobs.

Given the specificity of national legal frameworks, this section does not comparatively review the equality laws, policies and commissions that have already been mentioned in the national chapters. Also, a comparative review of a specific equality provision under technical and vocational education and training (TVET) is yet to be undertaken.

3.2 Discriminatory norms and traditions affecting the world of work

3.2.1 The historical context of caste and untouchability in South Asia

Stigma and discrimination have deep historical, linguistic and ideological roots. The traditional caste system in South Asia can be traced to Vedic times. Untouchability was associated with those performing menial tasks and was justified through religious practices. Caste systems were founded on relationships of service and patronage, in which those in subordinated ancestral occupations served a privileged class

that owned most of the productive resources and provided minimal means of sustenance and protection to the lower castes. The privileged class also defined the legitimacy of a social order, enabling it to reproduce relations of domination over centuries.

After World War II, in the context of decolonization and the emergence of new states, a more egalitarian discourse was introduced based on legal political reforms. For example, law and policy measures included the prohibition of untouchability and specific measures to undermine caste discrimination. Some of these policies will be reviewed in the following sections.

However, in spite of liberal measures, inequalities have persisted, and caste remains an important parameter that influences the composition of labour markets today.

3.2.2 The historical context of social hierarchies in the Gulf and Levant

In other regions, similar patterns applied. Ethnic labour hierarchies in countries bordering the Indian Ocean were often rooted in long histories of political and trade dominance and subordination. Stigma and discrimination of a religious and racial nature enabled the reproduction of those traditional hierarchies. For example, under Ottoman rule, subjects were divided by the religion-based distinction codified by the millet system, which established a two-tier hierarchy between a higher community made up of Muslims and a lower “protected” community made up of the “people of the book” – Christians and Jews (Traboulsi 2012).

3.3 Regional patterns of discrimination by sex

Women are both discriminated against and excluded from the labour market in the countries discussed in this paper. The male breadwinner model persists in informing labour market relations, limiting paid work opportunities for women in addition to traditional patriarchal divisions of labour within households which results in the bulk of unpaid and invisibilized work being carried out by women. While measuring exclusion through large national data sets is a challenge, they do capture wherever available, and to an extent, gender-based labour market trends, which creates spaces for further discussion and points to the existence of discriminatory hurdles to enter and exit the labour market within the country. Discrimination

based on identity (race, caste, religion and ethnicity) often intersects with the other identities of a person to further disadvantage women belonging to marginalized groups more than others; the extent of this phenomenon has been captured most exhaustively through ethnographic methods and meso as well as micro-level qualitative research.

Gender disaggregated data affords greater significance to policymaking, as it provides an indication of broad trends; for example, in India, it highlights low labour force participation rates and women's concentration in lower-paying jobs and specific sectors within both the formal and informal economy. While the systematic undercounting of women's paid work is slowly being recognized in national data sets in several countries, existing data sets that have sex-segregated data for wage work point to the uneven gender and work participation trends that have persisted across time. For example, on average, women are less likely to participate in the labour market, facing a global gender gap in participation of over 26 percentage points, and they are less likely to find a job when they do participate. These gaps are particularly wide in northern Africa and the Arab States, where women are twice as likely to be unemployed as men. Once in employment, women face segregation in terms of sector, occupation and type of employment relationship, resulting in restricted access to quality employment. This forces them into vulnerable forms of employment. In fact, the data shows that 82 per cent of women in developing countries were in vulnerable forms of employment in 2017 compared to 72 per cent of men (ILO 2018).

In relation to paid work opportunities, the inadequate capturing of data on the overlapping reasons for migration for women, the absence of data on short-term labour migration trends and the lack of a gendered break-up of remittances are some examples of the gaps in national large data sets through which critical data on women falls through the cracks and are rendered invisible for macro analysis. While the income poverty of women is captured in some large data sets, the counting of their unpaid work and continuing labour as a contribution to the economy is possible through time use surveys, which are rare in number and scope.

3.4 Dynamics in the construction of discriminated migrant identities¹⁸²

This section highlights the documented interplay of the new social, economic and political dynamics that contribute to the delineation, consolidation and institutionalization of patterns of stigma and discrimination against specific groups of migrant workers.

With the contemporary transformations of local economies, traditional social orders have been challenged, and new patterns of stigma and discrimination have emerged. For example, Breman (2019) demonstrates how traditional forms of caste bondage in India have changed. In traditional settings, the upper castes were obliged to provide certain forms of employment to people from lower castes in their villages in exchange for the services they performed. Today, while the former stigma often persists, those practices of patronage and compensation have eroded. Hence, those who are desperate to make ends meet often have no other choice but to seek employment outside of their traditional social environment. Breman reviewed how this has prompted new forms of bondage in which migration, referred to as "footloose labour", and debt play an important role while caste discrimination persists.

The following section explains the discriminatory drivers that are expelling certain specific populations from their traditional habitats in a general environment of job scarcity, which forces them to accept discrimination in the world of work. The chapter then examines how labour discrimination is used to subordinate migrant workers and justify new hierarchies.

3.4.1 Political and economic processes driving migratory discrimination in South Asia

"We are confronting a formidable problem in our global political economy: the emergence of new logics of *expulsions*. The past two decades have seen a sharp growth in the number of people, enterprises, and places expelled from the core social economic orders of our time." (Sassen 2014, 1) This section describes the different types of drivers of expulsion and more specifically their discriminatory nature.

¹⁸² While most examples referred to in this section draw from India, similar dynamics apply to other countries in the region.

Physical expulsions affecting indigenous populations

A repository of documentation on how displacement affects indigenous people is available with the Internal Displacement Monitoring Centre (IDMC). While they have several reports, their 2016 thematic report *Pulled Aside, Displaced for Development in India* highlights

how indigenous rights are undermined in land acquisition and other processes leading to displacement. Table 5 illustrates how indigenous populations in resource-rich areas in the Chotanagpur plateau of India tend to be displaced by development projects leading men and women to seek employment elsewhere.

► **Table 5. Characteristics of districts from which high numbers of domestic workers in India originate**¹⁸³

Districts	ST % of pop. Census 2001	Rank in ST population among states	Development projects and other land access figures	Potential affected population / IDPs* ejatlas.org
Jharkhand				
Gumla	73	1st in proportion	Steel plant in Torpa-Kamdara, Koel-Karo dam, power plant	150 000
Khunti	68	2nd in proportion		
Ranchi	42	1st in numbers	New urban development, plastic, textile, IT hubs	
Chattisgarh				
Dantewada	79	1st in proportion	Iron ore mines in Bailadilla Hills, Indrawati dams, Polavaram MPP, multiple steel plants, other mining projects	40 00 100 000+ IDPs
Bastar	66	2nd in proportion		
Jashpur	63	3rd in proportion	Gullu Hydro Project, bauxite mining	
Surguja	54	1st in numbers	Coal and bauxite mines	1 200–1 500
Orissa				
Malkangiri	57	1st in proportion	Polavaram Dam, Balimela	4 000 + IDPs
Mayurbhanj	57	1st in numbers	Subernarekha MPP	28 000, IDPs
Rayagada	56	3rd in proportion	Coal, bauxite and dams	IDPs
Gajapati	51	5th in numbers	86 per cent ancestral lands belong to Govt.	
Sundergarh	50	2nd in numbers	Iron, bauxite, steel plants	IDPs
Kandhamal	52		Niyamigiri Hills bauxite mining	25 000 IDPs

*IDPs: Internally displaced people

Source: Authors' analysis

According to Shah and Lerche (2020, 725–26):

[R]egions that have experienced a long history of internal colonialism, with outsiders siphoning off the indigenous wealth leaving behind high levels of poverty, are now providing labour for the lowest rungs of the labour hierarchy in more developed parts of the country. This is as true of Chhattisgarh and Orissa as it is of

Jharkhand. Much of the land in these belts was historically protected for Adivasis to halt land alienation and dispossession under colonialism, through the Chotanagpur Tenancy Acts and other land laws, and enshrined in the Indian Constitution's Fifth Schedule. However, these laws are being undermined. Since the mid 1990s, hundreds of Memoranda of Understanding have

183 The ILO under the Work in Freedom programme prepared this table to identify the districts of origin of domestic workers for project targeting purposes.

been signed between multinational and national corporations and state governments promising land for mineral extraction, industries and power plants. The result is a new wave of accumulation by dispossession and even an internal civil war which human rights activists argue has the main purpose of dispossessing the land from the people who live there. Most of the central and eastern Indian belt is now highly militarized, in the name of clearing India of its terrorists, its greatest single internal security threat; the Maoist inspired Naxalite rebels. Meanwhile the armies of vulnerable migrant labourers from these alleged rebel lands grow.

There are similar patterns of internal colonialism at work in other parts of the country – for instance, in the likewise poor tribal areas of Rajasthan, Madhya Pradesh, Maharashtra and Gujarat providing seasonal migrant labour for elsewhere in those states (Bremner, 1996; Mosse et al., 2002; Jain and Sharma, 2019). Of course, such spatial relations of domination and subjugation which mark internal colonialism are not the only explanations for migration. In some parts of the country – such as the agricultural plains of Bihar and UP – escaping oppressive landlords as well as absence of local jobs have been a reason for low caste migration (Rodgers & Rodgers 2011; Gidwani & Sivaramakrishnan 2004). The point is that the *co-constitution* of the spatial geopolitics of uneven development and caste/tribe trumps identity alone, or region alone, as significant features of the politics of oppression and exploitation underlying patterns of seasonal labour migration.

As documented by Jain and Sharma (2019), the south Rajasthan region is another main source of seasonal Adivasi migrant labour for Gujarat. “Until as recently as the 1970s, the Aravalli region was thickly forest clad, rich with abundant forest produce, well-stocked with water sources, [and] receiving over 100 days of timely and dependable rainfall.” In the last six decades, however, the environment has undergone ruthless destruction due to anthropogenic activities, losing about 45 per cent of its forest cover between 1972 and 1985. This has resulted in a dramatic lowering of the water table, unchecked soil erosion and the rapid desertification of the area (Rathore

and Verma 2013). This drastic socioecological decline is often presented as a depoliticized, geographical destiny of the region. Mosse (2007, 73) argues that on the contrary, these adverse changes are intimately related to the following sociopolitical processes of the distribution of power and resources in the region: the alienation of Adivasis from their means of production from colonial times onwards; the concentration of wealth and control of Adivasi economy; and the persistence of historic inequalities in the contemporary economy.

Jain and Sharma continue: The 1953 Rajasthan Forest Act brought large tracts of forest and common lands under state ownership, prohibiting Adivasi use of these for activities such as grazing, pasturing and collection of firewood (PUDR 1991). Jones (1978) argues that with the value of the resources extracted from their areas far outweighing the money put in for local development, the Indian state has actively engineered Adivasi underdevelopment. Moreover, unregulated mining deepened the adverse ecological transformations in the region, diverting large tracts of forest and common lands for illegal open-cast mining, further diminishing water tables and contaminating ground water. This, in turn, has reduced agricultural and livestock productivity, forcing poor rural communities to sell their land and robbing them off their limited means of production (Gopalakrishnan 2012). “In the 1970s and 1980s, a ‘Gold Rush’ of mining leases started, obtained by upper-caste businessmen who subverted legal provisions with state collusion, to tap the rich mineral deposits found in forest and common lands. In a short span, ‘a thousand millionaires are said to have emerged in the city of Udaipur’, while Adivasis had to resort to dangerous and poorly paid manual labour in these mines (Government of Rajasthan [GoR], 2002, p. 52).” (Jain and Sharma 2019, 72)

“The effect of these processes was a quick and dramatic concentration of wealth and control over [the] productive resources among local dominant groups, entrenching the power of a rural oligarchy, who used it to exercise control over the economic and social lives of Adivasis.” (Jain and Sharma 2019, 72)

Land dispossession also affects other rural groups, including Dalits. In-depth studies by Agarwal and Levien (2019) of a village in Rajasthan and one in Telangana, both of which

have experienced land expropriation for special economic zones (SEZs) in the last ten years, show that Dalits (Rajasthan) and Dalits and Adivasis (Telangana) suffer disproportionately. In the case of Rajasthan, either through having to sell whatever little land they have early on for a low price, many landless Dalits have lost whatever local livelihood they had without gaining any access to new jobs created by the SEZ. Meanwhile the upper castes, and especially the ex-landlords, profited dramatically from land speculation.

In Telangana, mainly OBCs, Dalits and Adivasis were dispossessed for meagre compensation, while most villagers belonging to the old landlord Reddy caste did not lose land. Dalits and Adivasis gained access to low-paying, unskilled casual work in the SEZs, but only OBCs could get unskilled but much better paid jobs, such as weighers, packers, boiler room attendants and drivers. Access to the SEZ jobs was in the hands of the Reddys, who benefitted systematically from the SEZ. Better jobs went to upper castes and all jobs had to be recommended by the Reddy village sarpanch; in the words of the Dalits, what it took was “going begging to the sarpanch”. Dalit women who had led a protest movement against the dispossession were doubly disadvantaged (Agarwal and Levien 2019, 17). In both cases, the Dalits reported that their economic position had become worse due to the dispossession (Agarwal and Levien 2019, 18).

Displacement caused by the agrarian crisis

“The sheer volume of workers seeking jobs as a result of the agrarian crisis has never been as high in contemporary history.”

– Trade Union Leader, India at workshop organized by the IHD, LSE and ILO, January 2020

As agriculture modernized from independence onwards, and agricultural labour employment fell dramatically, Dalit agricultural labourers from village India, especially male labourers, moved into seasonal labour migration. An agrarian crisis hit most of the country in the decade from 1997 onwards, as the liberalizing government withdrew much of its economic support to the sector, including its agricultural infrastructure investments, and subsidized input prices. This especially affected the vast group of small and marginal farmers that constitute 86 per cent of all farmers (2015–16) (Ramachandran 2011). While agricultural growth rates have recovered

somewhat during the last 15 years, profitability is still very low. Smaller farmers are squeezed out or cannot afford to use paid labour any longer, and so most remaining local Dalit male agricultural labourers have been forced to seek work elsewhere (Shankari 2018a, 2018b).

The agricultural sector has gone from providing work to 60 per cent of the working population of India in 2000 to 43 per cent in 2019. But the boom in India with its unrivalled economic growth rates from the early 1990s has only just managed to accommodate those who left agriculture, and that too in informal work. Even worse, this “job-less growth” has now been replaced by “job-loss growth” as the population in work has shrunk in the last years leading up to 2017–18, a record dip since at least 1973 (Srivastava 2012; Kannan and Raveendran 2019). Dalits and Adivasis, however, cannot afford to be unemployed; they simply have to undertake any income-generating activity available. For poor rural Adivasis, Dalits, Muslims and other marginal and small farmers pushed to find new non-agricultural incomes, it has become even more necessary to migrate seasonally – from what have become low-growth labour reservoir states and districts in central, east, north and northeast India to the economic growth areas in the south, west and parts of north India, such as around Delhi.

Krishnaraj and Shah (2004) mentioned that the face of farmers in India is female, highlighting the importance of women’s work in agriculture, their heavy work burden and the unequal returns for their labour. The outmigration of men to urban areas and the non-farm sector in search of better livelihood options has resulted in women being left behind to work in agriculture as workers and farm managers. Hardikar (2019) states that agricultural distress is “pushing men out of agriculture” and “pushing women within agriculture”. When agricultural distress affects any region, the first victims are usually the women; it affects them in several ways – increased work burden, higher debt repayment burden, reduced consumption and lower spending on healthcare.

In a brief prepared by the Centre for Women’s Development Studies for the ILO’s Work in Freedom Programme, they highlight the fact that there have been several studies to understand the agrarian crisis, farmer suicides and the growing chasm between urban and rural India, inequality, class divides and political

factors. Almost all of them unanimously admit to three common factors: that net rural incomes are falling, the per capita debt of farmers is increasing, and that small and family farms are becoming unviable and non-remunerative.

A recent survey of seasonal migrant workers from Tiruppur in the Tamil Nilgiri Mountains – mainly in Dalit and OBC families – found that for them, the agrarian crisis was the main push factor. This crisis included landlessness, insecure land rights and insufficient income from agriculture. The study also covered seasonal migrants from Uttarakhand to industries in Dehra Dun district (UP) where the agrarian crisis was fueled by the increased presence of wild animals, dams and other displacement, state curbs on the collection of forest produce and so on (Chauhan et al. n.d.). Case studies of the agrarian crisis abound, see among others the [PARI webpages](#).

With the COVID-19-induced collapse of seasonal labour migration work, landless and land-poor sections of the population have been especially hit hard as they had little to fall back on except for the insufficient assistance provided by the government. This includes Dalit migrant labour households, who are generally landless, and Adivasi migrant labour households, who tend to have small, rain-fed plots at best. A survey of 426 Adivasi migrant labour returnee households in Rajasthan showed that more than half of the households had “cut expenses on food and vegetables”; 48 per cent were borrowing in cash and kind to survive, and 9 per cent had to reduce the number of meals to one a day. A third did not have access to the stipulated government ration system (Kumar 2020, 6). Reports indicate that Dalits and Adivasis are more likely than others to be unable to access government COVID-19 support (Sur 2020).

Migration resulting from the unemployment crisis

India has seen a decline in the absolute levels of employment of 6.2 million people between 2011–12 and 2017–18 (Kannan 2020). Such a decline in employment had not been recorded since the NSSO began surveying employment and unemployment approximately every five years from 1973 onwards. The decline particularly affected women. In the context of population increases and mild economic growth,

such a decline, referred to by Kannan as job-loss growth, suggests that economic growth is decoupled from employment and is associated with growing inequalities (Kannan 2019).

While employment statistics are important, for countries like India that have a predominantly informal economy, it is important to contrast employment figures with other aggregates that describe the quality of work. In 2018, 82 per cent of male and 92 per cent of female workers earned less than 10,000 Indian rupees a month (Basole et al. 2018).¹⁸⁴ The ILO’s 2018 Wage Report noted that the share of national income paid in wages to workers in India had dropped from 38.5 per cent in 1981 to 35.4 per cent in 2013, which represented almost half of OECD comparable levels (Khetan 2020). Such low labour income is characteristic of a low-wage economy, which stunts workers’ capacity to invest in education, health and housing among others.

Srivastava has shown that while there is no hard data to establish dynamics in seasonal and circulatory migration, several in-depth empirical studies indicate a high incidence of such migration as well as its growth (Srivastava 2011). For example, in outmigration endemic in rural areas of central India and tribal regions such as Andhra Pradesh, north Bihar, eastern Uttar Pradesh and so on, the incidence of families with at least one outmigrant ranges from 30 per cent to 70 per cent (Srivastava 2011; Deshingkar et al. 2008; Mosse et al 2005). An analysis by industry and sector reveals a significant incidence of seasonal migration in several industries. Many studies show that for all segments of migrant work, employers prefer migrant labour to local labour because they are cheaper.

Pooling of unemployed footloose workers with low income expectations

While India has been experiencing “job-loss growth” as described by Kannan, public discourse and policy efforts on addressing unemployment have focused on improving the skills of India’s workforce. The National Policy on Skill Development and Entrepreneurship, 2015, laid out the Skill India Mission, and envisaged the creation of sector skill councils (SSCs) by the National Skill Development Corporation. Multiple old and new schemes to promote skilling are being implemented throughout the country,

184 10,000 rupees at 2018 average currency exchange rate amounted to \$146.

including in states from which migrant workers originate. Public and private skilling incentives tend to be gendered and stratified along caste lines. For example, women from low-income Adivasi communities in Jharkhand tend to be trained in tailoring and housekeeping, while Dalit men in low-income households are trained in manual jobs such as welding, masonry and plumbing. Both the stigma and class status associated with certain types of occupations play a role in steering social groups towards one or another occupation. The common paradox is that at the national level, the skilling of low-income groups does not necessarily match job availability or the established minimum wages.

An important challenge is that low-income households do not have equal opportunities to choose higher-paying occupations. In addition to that, social and political incentives to choose an occupation drastically differ depending on household income, gender and caste. Low-income Dalit women are very unlikely to be able to afford education to become a doctor, and even if they could afford it, they would face multiple social obstacles dissuading them from even considering it.

People from low-income households are trained with the expectation of helping them access a better job or better pay – something that may not materialize, especially if they are Dalits or Adivasis. As they desperately need jobs, they become more willing to accept poor working and living conditions. Having pools of trained workers allows industries to choose workers who are sufficiently desperate to accept meagre working and living conditions. The effect of this is that the labour costs of certain occupations remain low. The situation has been compounded by the recent returns of migrant workers which have caused a depression of wages. For example, it was reported that wages in Tamil Nadu during the pandemic in 2020 decreased from 300 to 250 rupees a day.

Discriminatory public discourse regarding migrant workers

The public discourse on seasonal migrant workers is overwhelmingly negative. Myths abound: migrant workers are seen as “stealing”

local jobs and are accused of being an economic burden on the economies of the destination when, in reality, the huge majority of migrants work in “Dirty, Dangerous and Degrading jobs which locals do not want to do” (UNESCO 2013, 7). Culturally they are “othered” “through acts of labelling, such as ‘outsiders’, ‘encroachers’, ‘illegal occupants’ and ‘criminals.’” (Mander et al. 2019, 5). The term “Biharis” is routinely used derogatorily to stigmatize seasonal migrants from a variety of regions in Hindi-speaking north India (see for example Fazal (2016)); this is so common that it even has its own Wikipedia entry.¹⁸⁵ Shah and Lerche (2020, 727) argues that “the xenophobia stigmatizes the seasonal migrant workers [who are accused] of bringing diseases, violence, job insecurity, and accuses them of being BIMARU [also used as an acronym], a Hindi or Urdu word for illness which has become an unfortunate term for the general poverty and underdevelopment of states such as Bihar, Orissa, Jharkhand.”¹⁸⁶

This disadvantages seasonal migrants in the labour market and beyond. Adivasi and Dalit seasonal labour migrants suffer the most. They are discursively constructed as hardworking unskilled labourers. This justify their employment in dirty, dangerous and back-breaking work. In Gujarat, Adivasis from the hills and highlands have become part of the low-end urban workforce, but they are stigmatized as criminals and harassed by the police (Mosse et al. 2005). They face more stigma from the police than other seasonal migrant labour (Jain and Sharma 2019). “Tribal migrants are often regarded as ‘simple, ignorant and uncivilised’, their girls ‘loose’, though – unlike Dalits – they tend to be seen as ‘clean’. The stigma of filth and pollution attached to Dalits is prevalent everywhere such that in some of our sites Dalits hid their names to rent a room.” (Shah and Lerche 2020, 727).

A number of political and local movements draw on and contribute to such public discourse. This includes the Shiv Sena party in Maharashtra and Mumbai that has been stridently anti-migrant labour from its inception in the 1960s. In 2008, violent attacks by a Shiv Sena splinter group on north Indian migrants led to more than 40,000 workers from UP and Bihar–Jharkhand fleeing

¹⁸⁵ See Wikipedia’s page on [Anti-Bihari Sentiment](#).

¹⁸⁶ The acronym BIMARU was coined in the mid-1980s and comprises the first letters of four states: Bihar, Madhya Pradesh, Rajasthan, and Uttar Pradesh.

the state; migrants claimed that the local police did little to stop the violence against them (Abbas 2016). In Gujarat in 2017, tens of thousands of UP and Bihar-Jharkhand workers fled after attacks from Gujarati groups affiliated to a caste association campaigning against migrant workers, after a rumour about migrant labourers raping a 14-month-old girl began to spread (Mitul 2018). The same year, in Karnataka, at least 60,000 workers mainly from the northeast fled as they feared a crackdown after a state government decree against illegal immigrants from Bangladesh, and WhatsApp scare stories that began to circulate led to migrants fleeing Kerala. "Casteism creates an overall hostile environment for migrants including from the local workforce who can participate in their stigmatization. Jharkhandi and Bihari workers have been beaten on trains and chased away by other workers tormenting them as uncouth, *jungli* (wild and savage) and accusing them of taking over regional cultures and languages." (Shah and Lerche 2020, 726–727)

The absence of government protection and support for seasonal migrant labour also showed when the government shut down the economy due to COVID-19 in March 2020. Seasonal migrant workers were left stranded, with no work, no income and little by way of transport home. Huge numbers of labourers simply walked hundreds of miles to get back home, without public support, and were harassed by police and government officials.¹⁸⁷ There are reports that those who looked as if they were not upper castes, especially Dalits and Adivasis, were singled out for harassment (Sur 2020).

Policies to disfranchise migrant workers

The citizenship rights of seasonal migrants are *de facto* curtailed, and they have little access to standard welfare measures (c.f. Mander and Saghal 2010). They lack political representation as they have no voting rights and little or no political voice at the place of destination, and they are also barred from national elections unless they trek across the country to vote in their home villages. Often, migrants also do not speak the local language, which alienates them further, including from local low caste workers (Shah and Lerche 2020).

Mander et al. (2019, 8) explain that the "violation of basic worker rights is pervasive in the country's informal economy" and outline two mechanisms that facilitates this. One is through the non-implementation of labour laws as also pointed out by the National Commission of Enterprises in the Unorganized Sector (2007). "The state of Gujarat exemplifies the complicit nature of the state in all of this. Breman (2013) as well as Hirway and Shah (2011) argue that there has been a conscious thrust by the state government to not monitor compliance with minimum wage laws so as to attract investors by assuring non-interference. [...] The second mechanism that creates conditions of grave labour rights violation is the dilution of labour laws themselves, including the weakening of trade unions and workers' organizations, the relaxation of worker hiring and firing laws and the deepening casualisation of work." (Breman 2013; Hirway and Shah 2011) The recent labour law reforms have diluted labour laws further and have been accompanied by the actual suspension of core labour laws by at least ten Indian states, including the suspension of the eight-hour working day by at least six states as a pro-business COVID-19-related initiative.

Freedom of association and collective bargaining rights are also severely curtailed. Seasonal migrant labour does not have the formal rights to join workplace unions if they are employed through labour contractors, which very often is the case (Shah et al. 2018). It is also common for employers and labour contractors to obstruct union access to workers and get rid of workers wanting to organize, as shown in the case of the Delhi construction sector by Srivastava and Jha (2016). Most unions and Left parties rarely organize Adivasi and Dalit seasonal labourers. This is mainly done by alternative movements and union initiatives (Lerche and Shah 2018).

The problem is exacerbated by Adivasis and Dalits also having less local contacts than other migrant workers. A major survey by the NGO Aajeevika of seasonal migrant workers in the main towns of Gujarat states that "upper-caste [migrant] workers reported a lower incidence of wage theft by employers, harassment and abuse [...] they were often able to negotiate and access

¹⁸⁷ Kerala reportedly stood out as providing better significantly support to seasonal migrant labourers, see Arnimesh (2020).

support from their social networks when faced with such cases. Adivasi workers on the other hand experience high 'internal alien-ness' as Shah and Lerche (2018: 19) have called it." (Jain and Sharma 2018, 78)

It is also difficult for seasonal migrants to establish their legal status as they do not possess locally issued identity cards (Abbas 2016, 164). Without these cards, they cannot access public welfare services, such as housing, subsidized food, education and healthcare, or open a bank account (159–160). "For the authorities, they simply do not exist and are treated as second class citizens, if citizens at all." (Shah and Lerche 2020, 726) The recent introduction of "portable" ration cards too is of very limited benefit to them, because if it is at all used by a seasonal migrant, the rest of the household back in the village will automatically be excluded instead.

As concluded by Mander et al. (2019), for circular migrants, the "system fails the citizen, as the person is denied access to a range of entitlements, from legal rights of political representation (voting) to accessing public services and social protection measures, owing to them not being enumerated in their destination areas."

Migrant household level discriminatory reactions

The job crisis back home, as explained above, drives people to migrate for work, despite the discriminatory conditions they face while doing so. One contributing factor is that significant levels of discrimination are common in many home regions too, where the discrimination is based on class, caste, tribe, religious divisions and/or gender. Non-agricultural work away from the home village is generally seen as less oppressive than working for the higher caste landowners in the village, and also as a means of escape from the all-encompassing local oppressive relations covering work, reproduction and village politics. "For many Dalits, the town represents the escape from rural toil and the risk of humiliation to 'mere poverty'" (Mosse 2018, 427). Young people in particular may see migration as a means to escape social norms within the village and the household, even if only to the extreme conditions in brick kilns (Shah 2006) and construction work (Picherit 2018; Lerche 1999).

While the majority of Dalit migrants are men, the women from the community also migrate

for work, most often with their husbands; for example, to brick kilns. But it is also very common for them to stay in the villages where they then take over whatever little agricultural work is available; village studies show that Dalit women constitute the majority of female agricultural labour (Swaminathan 2020).

Shah shows that despite the undeniably exploitative and oppressive conditions of migrant Adivasi labour, from the migrants' point of view, the ability to temporarily live away from home for a part of the year can be experienced as liberating. Adivasi youth in Jharkhand often migrate seasonally to work in faraway brick kilns in West Bengal in order to see a different world, explore amorous relationships prohibited at home and get away from the restrictive kinship relations at home (Shah 2006). In the same vein, Picherit (2018) documents that for "first-time" male seasonal migrant Dalit workers, the time to leave for work is exciting as they expect a new world outside the realm of the village to open up for them, while those who have also been seasonal migrants in previous years, on the other hand, are apprehensive when they are setting off again. Income and freedom from local caste oppression are the main reasons for young Dalits in the Telangana village he studied to seek work outside of the village.

In the context of the Work in Freedom Programme, Blanchet (unpublished) and her team undertook a qualitative study on women from Bangladesh who migrated to different Arab countries. Among other issues, the study describes the variable patriarchal characterizations of women's migration in their own areas of origin. A migrant women who was too successful was characterized as having engaged in "disreputable work", while a women who was obviously unsuccessful was also characterized as having lost her dignity. Migrant women who showed neither success nor failures in relation to their migration also often felt the pressure to remigrate in order to increase their family income. These multiple representations of migrant women left women in their home areas no choice but to accept the stigma or remigrate.

3.4.2 Migrant workers and the formation of new labour hierarchies

In Chapter 2, we reviewed how migrant men and women of different origins and social groups are particularly common and visible in several

sectors. Their visible and unequal positions in labour hierarchies depend on a variety of factors.

Social, economic and political factors shaping migrant hierarchies

Migrant communities, groups and individuals negotiate social, political and economic spaces to access jobs and livelihood opportunities. Their cultural and spatial relationships depend on discriminatory normative frameworks, migrants' positionality to bargain and how they are perceived across the multiple localities where they project themselves. While much has been written about the role of wage disparities between migrants' areas of origin and destination, the cultural, historical and spatial relations of migrant groups with others are important as well. The prolonged historical presence of a migrant group or individuals in a specific locality makes a difference.

The legal framework defining the migration status and labour conditions of migrant workers is important. The absence of enforced protections for migrant workers plays a role, as does their isolation from other workers, in inhibiting their capacity to form a collective consciousness. Whether a migrant worker has identification papers, a labour permit or a visa is usually a consequential factor in determining working and living options. The context of work and social relations play a role as well. For example, those who are members of a union may sometimes expect different conditions than those who are not. The role and position of labour intermediaries that represent migrant workers, and those that represent employers, counts as well. Employers and contractors pick, choose and sort workers based on power relations and preferences marked by class, caste, sectarian identity, gender, age, proximity with contractor and other criteria unless such preferences are otherwise regulated and enforced. For example, in some sectors, hazardous jobs will tend to be undertaken by Dalits (section 2.3.5). In a study on labour relations in a port building site and spot labour markets in Kochi, Mythri Prasad-Aleyamma (2017) describes the varying labour relations and hierarchies of both local and migrant workers in such sites. The study analyses the cultural politics of wages in the construction sector. It explains the factors that influence variable wages among the different groups working at a specific port building site. While the origin of

the worker plays a role, multiple other factors do as well – including variable norms, the networks of different groups, their capacity to bargain, the organization of work and so on. An important characteristic of these hierarchies is that they may change depending on how capital is invested or not, the emergence of new actors, disappearance of others, and how different groups are able to negotiate them.

Reserving jobs for the dominant natives in contexts of austerity

Laws often tend to prioritize the employment and protections of native populations. The “sons of the soil” policies in Maharashtra and a number of other Indian states are noteworthy, but so are the policies of Gulf countries favouring Emiratization, Kuwaitization, Omanization, Jordanization and so on. Such reservation policies are important to distract from economic one that have been gradually dismantling redistributive state capacities that were meant for the middle classes. For example, since liberalization in the early 1990s, the central government in India has curtailed a number of its social programmes aimed at the middle classes and rural populations. This includes the increasing privatization of healthcare, education and housing and of access to good jobs. Politically, the diminishing redistributive state capacities have encouraged nativist policies where a number of Indian states have reserved the majority of formal sector jobs for locals. This includes Maharashtra where private sector firms are incentivized to employ 80 per cent locals (Vyas 2019). Six other states have also passed similar policies, though they find them difficult to implement (NA 2020b). Low-end jobs, on the other hand, are increasingly left for seasonal migrants. In the well-off state of Kerala, it is commonly held that no locals work as unskilled labourers in low-end sectors, such as construction or as street sellers. Surveys by Aajeevika in the towns of Gujarat show that this is also the case in sectors such as low-end restaurants and the sari cutting sector (Jain and Sharma 2019).

The state treats the rights of local citizens and of those migrating seasonally from other states differently in a number of ways. According to Jain (2018), “Though an Indian citizen has the right to travel and settle anywhere in the country, governance is structured in practice to demand a legitimate reason for the person’s existence

outside of their place of origin. In a brush with the police, a person from outside the city/town is viewed with suspicion unless they can show a valid reason for their presence there, which could be proof of employment or proof of residence. As Shah and Lerche (2018) argue, this suspicion is magnified in the cases of people from marginal groups, such as Dalits, Adivasis and Muslims (as the majority of the seasonal/circular labour migrants tend to be), who face broad-based and deep stigmatization in public spaces and while dealing with government authorities. In many such cases, a migrant can spend decades in a city, moving in and out, without ever acquiring a form of identity that validates her/his presence in the city/town, and which can protect them from such harassment.”

While seasonal migrants do often have proper national identity papers – such as the electronically based Aadhaar – these are issued in their places of origin. However, without identity papers from the state where they work, they cannot access local services. This enables authorities to ration rights, welfare services and the “decent” jobs to those deemed local citizens (Jain 2018), while seasonal migrants are maintained as a new, unsupported underclass.

Mander et al. (2019, 5) put it this way:

The routine denial of social rights has in effect stolen from these workers their full and equal citizenship. The Constitution is unambiguous in upholding the rights of Indian citizens to work and live freely in any part of the country. [...] We use the phrase “stolen citizenship” because for the ever-burgeoning footloose labour force of circular migrants, their formal or notional rights are taken away from them in the many slippages between the source and the destination. Despite being stark, these slippages remain invisible by design in terms of social and economic policy. It is important to recognize that these denials are the outcome of policy and legal frameworks which fail to address the hardship of this group.

Codification and consolidation of migrant labour hierarchies

Employers, contractors and other labour intermediaries play an important role in codifying migrant labour hierarchies. Often generically referred to as *dalals*, recruiters and contractors are also described by multiple

other terms throughout South and West Asia. The terminology may be specific to sectorial occupations, regions, layers of intermediation and periods of local history. To name just a few, *sardars* played a key role in sourcing workers for tea plantations in north and east India; contractors have therefore been referred to as *arkattis* in Assam’s tea plantations; and in rural Maharashtra and Gujarat, they are referred to as *mukadams*. *Thekedar* is another term commonly used in north India for contractors in sectors such as construction and garment work. Regardless of their location, labour intermediaries play an important role in linking migrant workers to jobs. They organize migration, recruitment and employment and a variety of other services such as the provision of loans to migrant workers. In addition, they provide labour to employers or other contractors.

Among different labour intermediaries, there may be important differences. For example, employers such as large-scale formal sector industrial companies often hire labour through employment agencies; however, these agencies, in turn, might rely on registered as well as unregistered labour contractors (Srivastava and Jha 2016). They also hire directly at the factory gates. Others rely directly on labour contractors (For example, see Mezzadri and Srivastava (2015), ILO (2017) (both for garment sector); Shah and Lerche (2018) for Odisha workers in the chemical industry in Coimbatore). It is well known that recruitment for labour-intensive dirty work, such as in brick kilns, normally involves unregistered contractors and/or registered contractors employing people over and above those on their books.

There can be a hierarchy of labour contractors, from large-scale higher caste contractors engaging several hundred labourers to small-scale contractors working under them who might themselves be Dalits and working as foremen for the labourers (Picherit 2009); Raj and Axelby (2019) have charted out the development towards the employment of small-scale Adivasi contractors. They deal with the employers and bring the workers to the workplace, often through long journeys. For jobs such as those on brick kilns, contractors often pay the workers an advance, and varying degrees of labour bondage is common.

“Payment was only at the end of a season, apart from a meagre weekly subsistence allowance. With the advance and subsistence cut from the final payment, accounting left to the whims of the factory clerks, and money given to contractors who may take their own share of the labourer’s salary, it was not uncommon for Adivasi and Dalit migrants to return with not much more than when they left (though some reported “savings”).” (Shah and Lerche 2020, 724)

Labour intermediaries play an important role in marketing the different characteristics of migrant workers to employers or higher-up contractors. Such characterizations tend to bring out specific gender and ethnic traits to distinguish workers from each other and justify different recruitment and labour costs. In *Maid for Each* (2016), documentary filmmaker Maher Abu Samra shows how domestic workers from different nationalities are sorted in catalogues, presented to prospective employers and how stereotypes of workers are constructed. A 2018 article titled “Justifying abuse of women migrant domestic workers in Lebanon: The opinion of recruitment agencies” in a public health journal explains how some recruitment agencies characterize some nationalities of domestic workers as “famous for escaping and entering the freelance business” and others as “educated, strong and demanding”. A recent study on migrant women from Bangladesh in Oman (Blanchet 2021) transcribes quotes from recruitment agencies explaining the difference between Philippine, Indian, Sri Lankan and Bengali workers. Recruitment agencies describe one nationality as follows: “Fifty per cent run away from their employers. They are hot and cannot live without a man.” These types of characterizations play an important role in legitimizing labour hierarchies.

Formal labour intermediaries also play an important role in advocating for migrant recruitment and labour regulations within the memoranda of understanding or bilateral agreements between countries or states of origin and destination. As Blanchet (2021) pointed out in her recent study in Oman, the salaries of domestic workers depended on bilateral agreements – with Filipinas earning 160–170 Omani rials, Sri Lankans earned between 110–120 rials, Indians 90–120 rials and Bangladeshis earning 80–90 rials. Once such legal mechanisms are in place, labour hierarchies are institutionalized.

Antagonisms between local labourers and different groups of migrants

Potential divisions between local workers and seasonal migrants are exacerbated by political actors seeking votes through the promotion of jobs for local workers as outlined above. Employers, likewise, divide workers, not only between permanent and informal labourers but also between local labourers and seasonal migrant informal labour. Case studies show, as outlined in sections 3.2.4 and 3.2.5 above, how Dalit factory and plantation workers have seen their strike actions undercut by employers bringing in cheaper seasonal migrant Adivasi and Dalit labour from eastern and central India.

A recent example of this can be gleaned from a bill approved by the governor of Haryana reserving 75 per cent of private sector jobs for those who have a state domicile certificate, meaning they are citizens and have been residing in Haryana for more than 15 years. The quota for local people will apply for ten years to private sector jobs that offer a salary of less than 50,000 rupees a month. The share of migrant workers in the workforce of Haryana’s industries is among the highest in the country.

Wages insufficient to cover migrants’ annual social reproduction needs

In India, seasonal migrant labourer constitute a cheap workforce for the employer. As pointed out in section 2, two thirds of all informal workers are paid less than the minimum required to cover their basic household needs. Their income does not cover the cost of the full maintenance or reproduction of themselves and their family on an annual basis, let alone pensions, sick leave or unemployment compensation. Paying this little is only possible because seasonal migrants rely on their families and kinship networks to care for them when they fall ill in their old age and to raise their children. Seasonal migrant labour relations are only possible because they draw on a geographically dispersed but socially close-knit system, a system that enables the employer to externalize the cost of the reproduction of its workforce. By externalizing, that is, by not paying, the full cost of maintaining its workforce, the seasonal migrant labour system is arguably based on super-exploitation, and is only possible because others can pick up the costs externalized by the employer.

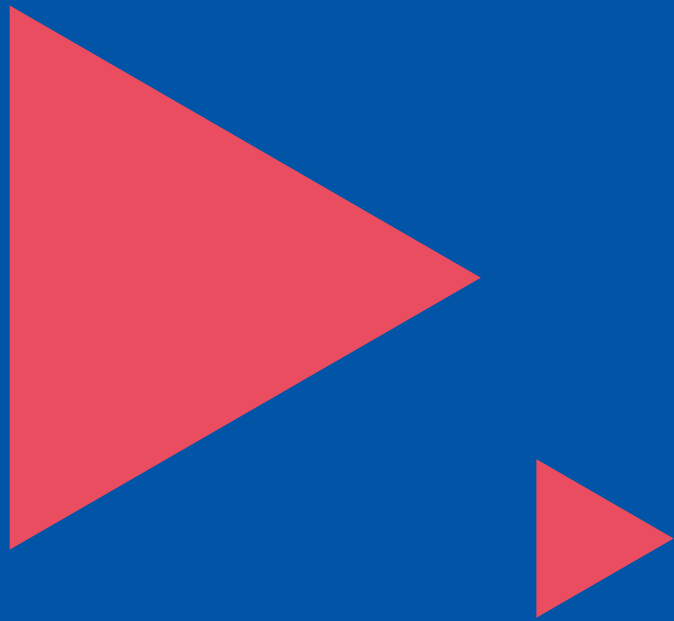
As outlined by Shah and Lerche (2020), the families at home are usually also working: in the migrant Adivasi home areas of Jharkhand, “economies of care include the land which provides grain for some of the year for the migrant household [when they have no wage work]; the forests that provide firewood and timber for building houses; and the cows, buffalo and goats that provide a livelihood and a safety net back at home.” In the plains, in landless Dalit households, the women and the young and the old may work as agricultural labour when such work is available, while maybe also

tending to a cow or a couple of goats. The paying of low wages to seasonal labour relies on the externalization of cost to this care economy, including its economic activities (Shah and Lerche 2020, 725).

A study commissioned by the Work in Freedom programme on the minimum wage in India’s garment sector critiques the methodology used to calculate wages, comparing it with the actual working and living costs of garment workers (Mathew, Mani and Battacharya 2017).

▶ 4

Conclusion



While references to international non-discrimination standards do occasionally surface in public discourses, this paper reviews evidence that discrimination in the world of work is not only characterized by socially deviant cases of discriminatory abuse, as reported in the media, but is intrinsic to the way various market economies and political systems are structured. This is manifested by indicators of privilege for some and indicators of deprivation for those at the bottom of social and political hierarchies, including the interaction between both.

Most academic literature focuses on inequalities and discrimination affecting the poor or the working class. However, there is limited literature about wealth and the control over the means to make livelihoods at the other end of the spectrum. Key resources of the economy are fully controlled by local minorities whose wealth and power depend on sustaining their capacity to dominate and control the labour force in different sectors. The work of migrant labourers, which is often precarious, nevertheless, represents the backbone of most economies in the region. In many countries reviewed in this paper, migrant workers are the majority, or they represent the main manual work-force. Cumulative grievances, in which discrimination plays a key role, can lead to social unrest affecting entire social and economic orders. For those at the top of the hierarchy, crises represent both a threat and an opportunity to assert and reproduce dominance. The legal, political and economic systems that are in place are therefore meant to be structurally unequal. As was demonstrated in section 3.1.3 and the country profiles in Chapter 2, migrant workers are often deliberately excluded from constitutional protections and from labour law provisions, and controlled through sponsorship systems (*kafala*) which, in practice, remain well enforced.

In all the countries reviewed in this paper, enforcement mechanisms of international standards related to discrimination have been weak for the last 20 years. In fact, public policies meant to promote the ease of doing business and labour flexibility have encouraged labour outsourcing practices that bring in migrants and minorities willing to accept working and living conditions that native workers would not deem acceptable and, as such, are discriminatory. Such policy frameworks have undermined the enforcement of domestic and international non-discrimination standards.

Structural discrimination is so ingrained that dismantling it requires addressing ideological barriers, removing policy and legislative obstacles that entrench discrimination, contesting and mobilizing the masses against the unequal treatment at several levels, and resorting to other measures, which can hardly all happen at the same time. Labour discrimination is a challenge that can only be overcome through a combination of short-, medium- and long-term policies.

4.1 Summary of CEACR recommendations

The following is a list of the most recent recommendations issued by the ILO CEACR, on the application of Convention No. 111 by country. It lists recommendations by country in alphabetical order.

4.1.1 Bahrain

In addition to requests for information on specific measures to implement the Convention, the CEACR issued the following recommendations to Bahrain in the Committee's most recent Observation and Direct Request on the application of Convention No. 111 by Bahrain (adopted in 2018, published 2019):

- ▶ Include in the Labour Law for the private sector a definition of discrimination, as well as a prohibition of direct and indirect discrimination, that covers all workers, without distinction whatsoever, with respect to all grounds provided for in the Convention, including colour, and with respect to all aspects of employment, including access to vocational training, to employment and to particular occupations, and terms and conditions of employment for all categories of workers, including migrant workers;
- ▶ Protect against discrimination in all forms of employment and occupation including in access to vocational training, employment and particular occupations and terms of conditions, and specify the remedies available for victims of discrimination;
- ▶ Incorporate a comprehensive definition of sexual harassment, both in the Labour Law and the Civil Service Law, and provide for access to effective remedies;

- ▶ Ensure that any rules adopted to regulate the rights of migrant workers to change employers do not impose conditions or limitations that could increase the dependency of migrant workers on their employers and thus increase their vulnerability to abuse and discriminatory practices;
- ▶ Address issues raised by the Committee (details in the country profile in Chapter 2) concerning the flexi-work scheme, and consider reducing the fees and relaxing the eligibility criteria to enable more migrants to apply for a Flexi permit;
- ▶ Prohibit restrictions on a worker's freedom to change their employer, including before the expiry of a 12-month period from the date of commencement of the contract, and to provide information on any progress made in this regard;
- ▶ Prevent and address sexual harassment in employment and occupation through practical measures, such as launching awareness-raising campaigns on the subject, encouraging management training on sex-based harassment prevention or inviting employers to establish formal policies and procedures to deal with sexual harassment;
- ▶ Review the approach to restrictions on women's employment in the light of equality principles to ensure that any protective measures taken are strictly limited to maternity protection or based on occupational safety and health risk assessments, and do not constitute obstacles to the employment of women – in particular to their access to posts with career prospects and responsibilities;
- ▶ Ensure that protective measures applicable to women are limited to maternity protection in the strict sense, and repeal any provisions that constitute an obstacle to the recruitment and employment of women, such as Ministerial Order No. 16 of 2013 (regarding occupations in which, and the circumstances under which, employing women at night is prohibited) and section 1 of Order No. 32 of 2013 (which prohibits the women's employment in certain sectors and occupations);
- ▶ Raise awareness of the relevant legislations and enhance the capacity of the competent authorities (including judges, labour inspectors and other public officials) in identifying and addressing cases of discrimination and also examining whether the applicable substantive and procedural provisions, in practice, allow claims to be brought successfully; and
- ▶ Raise awareness of the principles of equality and non-discrimination in employment and occupation and the procedures available and keep it informed of any progress in the establishment of the special unit that will be dedicated to receiving and dealing with workers' complaints related to discrimination.

4.1.2 Bangladesh

In addition to requests for information on specific measures to implement the Convention, the CEACR issued the following recommendations to Bangladesh in the Committee's most recent Observation on the application of Convention No. 111 by Bangladesh (adopted in 2019, published 2021):

- ▶ Take concrete steps to amend the Labour Act of 2006 or adopt other anti-discrimination legislation to (1) prohibit direct and indirect discrimination on at least all of the grounds under Article 1(1) (a) of the Convention with respect to all aspects of employment and occupation; (2) cover all categories of workers in both the formal and informal economy, including domestic workers;
- ▶ Ensure the protection of men and women workers against discrimination in employment and occupation in practice, particularly by the categories of workers excluded from the scope of the Labour Act;
- ▶ Take all necessary steps to ensure the protection of domestic workers in law and in practice, against any form of discrimination in employment and occupation, and ensure they enjoy full equality of opportunity and treatment on the same footing as other workers without discrimination;

- ▶ Ensure domestic workers have effective access to adequate procedures and remedies;
 - ▶ Take steps to ensure a comprehensive definition and clear prohibition of a hostile work environment and include *quid pro quo* sexual harassment in employment and occupation in the Labour Act;
 - ▶ Take preventative measures, including awareness-raising on sexual harassment in employment and occupation, and on the social stigma attached to the issue among workers, employers, their respective organizations and law enforcement officials, including on procedures and remedies available;
 - ▶ Strengthen efforts to address obstacles to women's employment, such as patriarchal attitudes and gender stereotypes;
 - ▶ Strengthen women's access to productive resources and enhance women's economic empowerment and access to equal opportunities in formal employment and decision-making positions;
 - ▶ Encourage girls and women to choose non-traditional fields of study and occupations, and reduce the number of early school dropouts among girls; and
 - ▶ Review the government's approach to restrictions on women's employment and take necessary steps to ensure that Section 87 of the Labour Act is modified so that any restrictions on the work that can be performed by women are limited to maternity protection (in the strict sense) and are not based on assumptions regarding their capacity and role in society.
- the rights of men as well as workplaces in the unorganized sector with more than ten employees are also covered, and to provide information on the practical application of the Act and other measures adopted or envisaged to combat sexual harassment and violence at work, including cases filed;
- ▶ Undertake a comprehensive assessment of the progress made to date in addressing caste- and tribe-based discrimination in employment and occupation;
 - ▶ Identify additional measures needed in order to advance equality of opportunity and treatment for all men and women, irrespective of social origin;
 - ▶ Step up efforts to raise public awareness of the prohibition of caste- and tribe-based discrimination;
 - ▶ Step up efforts in order to ensure full application of the Manual Scavengers Act 2013, in practice; and
 - ▶ Ensure that the principles of the Convention are fully reflected in the new legal provisions in the reform of the labour codes. These should define and prohibit direct and indirect discrimination in all aspects of employment and occupation with respect to all the grounds set out in the Convention.

4.1.4 Jordan

In addition to requests for information on specific measures to implement the Convention, the CEACR issued the following recommendations to Jordan in the Committee's most recent Observation on the application of Convention No. 111 by Jordan (adopted in 2019, published 2021):

4.1.3 India

In addition to requests for information on specific measures to implement the Convention, the CEACR repeated its past recommendations to India in the Committee's most recent Observation and Direct Request on the application of Convention No. 111 by India (adopted in 2019, published 2021):

- ▶ Amend the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act 2013 to ensure that

- ▶ Provide information on steps taken to implement recommendations of the NSCPE legal review on pay equity, with a view to explicitly defining and prohibiting direct and indirect discrimination based on at least all the grounds covered under the Convention and in all areas of employment and occupation, and covering all workers;

- ▶ Provide clear protection and remedies with respect to both quid pro quo and hostile environment sexual harassment;
 - ▶ Take the opportunity of the ongoing legislative review process to amend Section 69 of the Labour Code and the corresponding Ordinance to ensure that any restrictions on women's employment are limited to maternity in the strict sense and to provide information on steps taken in this regard;
 - ▶ Take all necessary measures, in law and practice, against discrimination in employment and occupation on the grounds of race, colour, national extraction, religion, political opinion and social origin; and
 - ▶ Take immediate and effective steps to address occupational gender segregation in the civil service, including measures to overcome the problem of women having insufficient number of accumulated years of experience and knowledge, and to promote women to higher-level posts.
- ▶ Develop and implement a comprehensive national policy for the elimination of discrimination in employment and occupation with respect to all the grounds set out in the Convention, including measures to raise awareness on equality and non-discrimination issues, and to provide information on any progress made in this respect;
 - ▶ Ensure special measures for the protection of women are limited to that which is strictly necessary to protect maternity and that these provisions do not impede the access of women to employment and occupation; and
 - ▶ Consider the possibility of reviewing health and safety issues with a view to improving health protection for both men and women, and adopting accompanying measures with respect to security and the availability of adequate transport and social services to enable women to access all types of employment on an equal footing with men.

4.1.5 Kuwait

In addition to requests for information on specific measures to implement the Convention, the CEACR issued the following recommendations to Kuwait in the Committee's most recent Observation on the application of Convention No. 111 by Kuwait (adopted in 2018, published 2019):

- ▶ Explicitly prohibit direct and indirect discrimination based on race, sex, colour, religion, political opinion, national extraction and social origin, with respect to all aspects of employment and occupation, including recruitment, and covering all workers;
- ▶ Adopt specific legal provisions defining and prohibiting both quid pro quo and hostile environment sexual harassment in employment and occupation, and provide for remedies and sanctions;
- ▶ Ensure all workers are protected in practice against all forms of discrimination, including sexual harassment, in employment and occupation;

4.1.6 Lebanon

In addition to requests for information on specific measures to implement the Convention, the CEACR repeated its past recommendations to Lebanon in the Committee's most recent Observation on the application of Convention No. 111 by Lebanon (adopted in 2019, published 2021):

- ▶ Ensure the new Labour Code contains provisions defining and prohibiting direct and indirect discrimination on at least all of the grounds under the Convention in all aspects of employment and occupations;
- ▶ Define and prohibit all forms of sexual harassment for all workers, including domestic workers and provide for prevention measures, complaint and investigation mechanisms and appropriate sanctions;
- ▶ Adopt specific measures to ensure, in practice, the protection of workers against discrimination on all grounds set out in the Convention and to protect workers against sexual harassment in employment and occupation, including through awareness-raising measures;

- ▶ Take necessary measures, in cooperation with social partners, to ensure the genuine protection for migrant domestic workers, in law and practice, against direct and indirect discrimination on all of the grounds set out in the Convention, and in all areas of their employment, either through the adoption of a bill on the employment of domestic workers or, more generally, within the framework of the labour legislation;
- ▶ Ensure that any new regulations envisaged on the right of migrant workers to change employers do not impose conditions or restrictions likely to increase these workers' dependence on their employer and thus increase their vulnerability to abuse and discriminatory practices; and
- ▶ Ensure that any new model contract for domestic workers provides for decent working conditions and does not contain clauses likely to increase workers' vulnerability to abuse and discrimination.

4.1.7 Nepal

In addition to requests for information on specific measures to implement the Convention, the CEACR issued the following recommendations to Nepal in the Committee's most recent Observation and Direct Request on the application of Convention No. 111 by Nepal (adopted in 2019, published 2021):

- ▶ Ensure national legislation includes an explicit prohibition of direct and indirect discrimination against all persons on at least all of the grounds enumerated in the Convention concerning all stages of the employment process, and provide information on any progress made in that regard, while specifying how the protection of the Convention is ensured to all workers, including those in the informal economy and non-nationals, irrespective of their regular or irregular situation;
- ▶ Address the social stigma attached to the issue of sexual harassment for workers, employers and their representative organizations, as well as law enforcement officials;
- ▶ Take proactive measures to ensure the effective implementation of the

Caste-Based Discrimination and Untouchability (Offence and Punishment) Act of 2011, including by raising awareness among the general public, as well as law enforcement officials, of the prohibition of caste-based discrimination in the national legislation, the remedies and procedures available;

- ▶ Strengthen its efforts to address gender stereotypes and vertical and horizontal occupational gender segregation, by enhancing women's economic empowerment and access to formal employment and decision-making positions, as well as by encouraging girls and women to choose non-traditional fields of study and professions while reducing the number of female early dropouts from school, including in the framework of the Fourteenth Three-Year Development Plan (2016/17–2018/19) and the Decent Work Country Programme for 2018–2022;
- ▶ Remove any restrictions imposed on women with regard to access to employment abroad; and
- ▶ Consider taking active measures to ensure better protection for men and women wishing to work abroad, in particular as domestic workers, such as, for example, concluding bilateral labour agreements, ensuring full monitoring and accountability of recruitment agencies, ensuring that women have an employment contract before migrating and equipping embassies to respond quickly to complaints of abuse.

4.2 Summary of recommendations from this paper

These recommendations were inspired by discussions and recommendations raised at a round table titled Labour at the Margins: Action for Non-discrimination and Inclusion, organized on 27–28 January 2020 in New Delhi by the Institute for Human Development, the London School of Economics and the International Labour Organization's Work in Freedom Programme. Given the multi-layered nature of discriminatory practices and the fact that detailed recommendations based on CEACR reports were already listed in the previous section, these recommendations only

highlight the broad general themes that could be addressed.

Economic laws and policies

1. Introduce comprehensive measures to address the agrarian crisis (e.g., proposals of the Swaminathan report in India) and prevent the takeover of land and forests from indigenous and other populations, as well as the privatization of the commons such as public lands, forests and water sources.
2. Demilitarize resource-rich and other areas that are home to Adivasi and other native populations.
3. Introduce comprehensive measures to address the job crisis and reconstruct the productive local economy (e.g., expand the Mahatma Gandhi National Rural Employment Guarantee Act, the Prime Minister Employment Programme of Nepal, and urban jobs guarantee programmes).
4. Strengthen and expand social protection functions of the state (such as education, healthcare, protection of land/forest rights and other commons).
5. Bring to a halt COVID-19 related suspension of labour market laws in many countries or states.

Special inclusion policies for labour migrants

6. Extend and implement the rights to freedom of association and collective bargaining to all migrant workers (Conventions Nos 87 and 98).
7. Ensure and enforce equal labour rights for all (remove exceptions and include excluded workers – such as domestic workers), boost labour inspection and ensure access to justice is possible for those commonly discriminated against.
8. Introduce laws and policies to make principle employers accountable for the working and living conditions of their

employees. Ensure that outsourcing and subcontracting processes are not used to avoid making employers and contractors accountable for the working and living conditions of their employees.

9. Ensure equal welfare rights for all, with special governance provisions to bar exclusions. Extend welfare provisioning to seasonal migrants, including access to the public distribution system, portable social security, schooling rights and housing rights.
10. Introduce special measures to prevent employers from abusing workers, forcing them to undertake personal services in additions to regular ones.

Migrants and their work

11. Remove work and mobility bans for specific groups (for example, bans on women migrating).
12. Review discriminatory migration regimes and labour hierarchies (*kafala*).
13. Regulate discriminatory policies by labour intermediaries and employers.

Specific discrimination

14. Strengthen anti-discrimination measures as per Convention Nos 111 and 169 with checks and balances such as including discriminated groups in the governance of justice (examples of good affirmative action programmes).
15. Strengthen and enforce the policies against gender-based violence affecting migrant worker populations (according to the CEDAW's and the Commission on the Status of Women's recommendations).
16. Introduce governance reforms to establish checks and balances so that discriminatory political discourses, hate speech and violence against workers are prevented.

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Work in Freedom

Work in Freedom is an integrated development cooperation programme aiming to reduce vulnerability to trafficking and forced labour of women migrating to garment and domestic work. The programme works along migration pathways in India, Nepal, Bangladesh, Jordan, Lebanon and some of Gulf countries. Interventions focus on promoting mobility by choice, fair recruitment to decent jobs, and safety and dignity for migrant workers.

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